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# Senate

The Senate met at 10 a.m. and was called to order by the Honorable MICHAEL ENZI, a Senator from the State of Wyoming.

## PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Awesome God of the universe, Creator of the changes of day and night, giver of rest to the weary, Your works are great and Your ways are just and true. Thank You for Your mercies and for Your blessings on our work. Thank You for the riches of Your grace that make salvation possible. Forgive our doubts, anger, and pride. As we look to You, may we learn to esteem others as more important than ourselves. Give Your wisdom to our Senators that they may be instruments of Your providence. Keep them from sin, evil, and fear, for You are our light and salvation and strength. Give us that peace which the world can neither give nor take away. Fix our minds on the doing of Your will. To You be the glory for endless ages. Amen.

## PLEDGE OF ALLEGIANCE

The Honorable MICHAEL ENZI led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, DC, July 20, 2004.*

*To the Senate:*

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MICHAEL B. ENZI, a Senator from the State of Wyoming, to perform the duties of the Chair.

TED STEVENS,
*President pro tempore.*

Mr. ENZI thereupon assumed the Chair as Acting President pro tempore.

## RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

## MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business for statements only for up to 60 minutes, with the first half of the time under the control of the majority leader or his designee, and the second half of the time under the control of the Democratic leader or his designee.

## RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Idaho.

## SCHEDULE

Mr. CRAIG. Mr. President, today, following 1 hour of morning business, the Senate will resume consideration of the nomination of William Myers III to be U.S. circuit court judge for the Ninth Circuit. A cloture vote is scheduled on the Myers nomination at 2:15 today, and that will be the first vote of the day. As a reminder, the Senate will recess from 12:30 to 2:15 to allow the weekly party luncheons to meet. Additional votes are possible today following the scheduled cloture vote. The Morocco Free Trade Agreement may be available, and we may begin consideration of the bill under the statutory limit.

As always, Members will be notified as additional votes are scheduled.

## VOTE ON WILLIAM MYERS

Mr. CRAIG. Mr. President, I see the minority leader in the Chamber. I will make a few brief comments prior to him taking the floor.

This morning, we will be in morning business, and I want to make a couple of comments about my frustration at this moment. William Myers is a Ninth Circuit court nominee from the President to fill the Idaho position. He is a phenomenal and highly qualified young man who has served as Solicitor at the Department of Interior. He was nominated well over a year ago and brought before the committee. He handled himself extremely well and professionally. He has been a man who has had experience in both the public and the private sector. He served on the Judiciary Committee under the former Senator from the State of Wyoming. He is a top-flight man.

Yesterday, as we debated the nomination of Bill Myers, no one from the other side came. The reason they did not is that we were served notice some months ago that Bill Myers would not receive a vote this year. We could try to cloture him, but they were going to block a vote against him. Was he qualified? Yes. Should he serve? Yes. Is he the selection of the President? Yes. Should he have an up-or-down vote? Absolutely. But that is not going to happen.

He is now the eighth judge the other side has just flat told us does not serve their political purpose, and therefore they will not allow us a vote. That is constitutional obstructionism in the first order of the advise and consent of our Constitution.

So here is a young man who came to Washington out of college to serve his U.S. Senator, served with honor with the Judiciary Committee, worked for a

private organization advising this Senator and the Senator from South Dakota, as well as the National Cattlemen's Association, on grazing; became a private practice attorney; then went as attorney to the Secretary of Interior; has served most honorably and very credibly. He will not get a vote this session of the 108th Congress. Why? Because the other side has just flat said he serves their environmental agenda purposes and therefore we will not be allowed to vote on him.

That is a phenomenally frustrating reality to me as a Senator who believes that we do not have the right to arbitrarily pick and choose, we have the right to advise and consent and to vote them up or vote down, 51 votes or 50 votes, but not to arbitrarily pick and choose to serve the political agenda of a given political party for these purposes. There is no other explanation than the one I have just offered.

If one looks at the broad qualifications of the eight judges who have now arbitrarily been chosen for their political past involvement and therefore the accusation that they might be an activist on the court, that is a frustration of the first order.

So no one came to the floor yesterday to debate him except those of us on the Judiciary Committee advocating his nomination. The votes are so locked in, so fixed, so regimented, that this just is not going to happen. So we will have a 2:15 vote today. It is perfunctory. It is just the way it is going to be, unless we break out of this and say collectively to the Senate as a whole, no, this procedure of misusing the process is wrong. There is a time to debate, a time of reality, a time of broad understanding, but most importantly, under our Constitution, we have never filibustered nor intentionally blocked by demanding a 60-vote majority. They have always broken in the past when tried, and ultimately up until this Congress, Presidential nominations received the opportunity of the advise and consent of the Senate by a vote on the Senate floor, not of a cloture but of a majority.

The reason I highlight that is because that is the vote this afternoon. It is a false vote. It is an unnecessary vote for a highly qualified young man who would serve the Ninth Circuit well, a Ninth Circuit court that is now viewed as the most dysfunctional court in the land, where over 90 percent of its decisions are overturned by the Supreme Court. Bill Myers brings common sense to the court, not the radicalism of San Francisco lawyers but common sense spread across the western public land States of our country.

Is that why he is not getting the vote? Very possibly so. And that is a tragedy of the highest order. This is not the kind of day the Senate, this great Chamber, ought to have, but we are going to have it today at 2:15 this afternoon. So it is important that I speak briefly to that.

## 9/11 COMMISSION REPORT

Mr. CRAIG. Mr. President, I know the minority leader is kindly waiting, but let me say one other thing. We are going to be presented—the press has already been presented—the 9/11 Commission report. I do not have one in my office. I have to go read about it in the New York Times. Thank you, Commission, for being so public that you will not even inform those of us who created you, but we understand they are going to recommend the creation of a czar-like or individual director of intelligence that coordinates all of the agencies.

I have one comment on that only because I have not seen the report, and I do not know that the minority leader has either—we have not had a full opportunity to read it—let us proceed with caution. We have done a great deal of work since 9/11 now to bring these institutions together to coordinate intelligence. We are better off than we were pre-9/11.

I am not sure that I want a Cabinet level, politicized director of intelligence for our country. I do not know that it is a good idea to politicize that. If we put them in a Cabinet level position, by the character of that position we have politicized intelligence. Intelligence should not be politicized. It ought to be factual. And we now know we have had a problem with the facts, but it wasn't just our intelligence community; it was intelligence communities around the world. Bad information makes bad information makes bad reports and can produce bad decisions.

Intelligence is critical and it needs to be of the highest order. I am not suggesting we don't have a top level coordinator/director, but let us think long about the idea of politicizing that person. We have seen the Directors of the FBI stay on through Republican and Democrat administrations throughout history—not always but many times. It brought quality and uniformity to that law enforcement community. It did not politicize it. It is every bit if not more important today, with the war on terrorism, that we build a quality structure, that the information be of the first order, and that it never ever could be suggested or run the test of, well, that person is a political person, that person was appointed because he was a political friend. That is my only caution today, in a preliminary thought, until we get the report and see the facts and the evidence. And I do wish the Commission would let us have the report before they give it to the New York Times. It probably would be a bit more appropriate and give us an opportunity to speak factually and knowledgeably about it.

I thank you, Mr. President. The minority leader has been kind and patient, and I yield the floor.

## RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

## ORDER OR PROCEDURE

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Democratic half hour be allocated in the following manner: Senator SCHUMER, 15 minutes; Senator HARKIN, 10 minutes; and Senator REID, 5 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, I will use my leader time so as not to take any of the Democratic time.

## JUDICIAL NOMINATIONS

Mr. DASCHLE. Mr. President, let me respond briefly, if I may, to the Senator from Idaho. I have respect for him and for much of the work we have done together over the years on many issues, including forest health. But I must say I strongly disagree with his characterization of this particular judicial nominating debate.

Over the history of our 220 years, the Senate has seen fit on countless occasions to require either a threshold cloture vote or, before we had cloture, some resolution to controversial matters involving extended debate. Before we had cloture, there was no way to resolve it. A Senator could see fit to talk about an issue or a nominee for days, weeks, months, and there was no way to resolve it. There were many occasions during the 20th century when this was exactly the case. That evolved, of course, with the implementation of cloture and the use of cloture over the course of the last 100 years. So now we have a rule of the Senate that says on those issues that are controversial, a supermajority is required.

I think for the Senator from Idaho to make the point that there is no vote is just wrong. The vote occurs at 2:15. If the supermajority will move to proceed on this very controversial nominee, you go to the second phase of consideration. But that is what the Senate rules require. I must say that is a far better approach than what we faced during the Clinton administration, when more than 60 nominees never got a committee vote. We go back to the old days of the 20th century during the Clinton years when you didn't even have an opportunity for cloture because the Judiciary Committee refused to act on over 60 nominees. So this is an improvement, to say the least, over that.

As to the qualifications of Bill Myers, I will simply say the ABA does not share the view of the Senator from Idaho with regard to his qualifications. It is very rare for the ABA not to categorize a nominee as qualified—extremely rare. They have not done so in

the case of Bill Myers. ''Partially qualified,'' but do we really want a ''partially qualified'' nominee to serve on the circuit court of our land?

It is rare—in fact, it is unprecedented—for the Native-American community in the United States to take a position on a judge. They have never done so. The Native-American community in South Dakota and North Dakota, in all Western States around the country, has come together with one voice to say this man ought not be a circuit court judge—unheard of. We have never seen that before.

We have never seen the National Wildlife Foundation take a position on a judge, but they, too, have said please do not confirm this nominee. Why? Because of what limited record he had with regard to judicial issues. He virtually has none as Solicitor. There is no real court experience, with a couple of exceptions. So you have somebody with at least, arguably, some ethical questions that have not been addressed; you have major communities such as the Native-American community in our country in an unprecedented statement in opposition; you have the ABA that has said they are reluctant to support this nominee because he is only ''partially qualified.''

So, Mr. President, clearly it is those and many other factors that led every single Democrat, in a rare demonstration of opposition in the committee, to oppose this nomination. We have now approved, I believe it is 196 nominations—198 nominations. That is a record that surpasses Bill Clinton, the first President Bush, and Ronald Reagan. This President's three predecessors have not had a record of confirmation equal to his.

I must say it is interesting, and I would note, that my colleague from Idaho, who just abhorred this current circumstance regarding cloture on a nominee, voted against cloture, voted to sustain the extended debate, ironically, in the circumstances involving another Ninth Circuit nominee, Richard Paez. They voted to continue the debate, not to vote for cloture, not to terminate the debate, not to move to that second phase. So I would certainly ask the distinguished Senator at some point for his explanation as to why it was appropriate to extend debate in that case but not in this case.

## THE WORKING POOR

Mr. DASCHLE. Mr. President, 60 years ago Franklin Roosevelt gave one of the most memorable State of the Union speeches in our history.

As he spoke, Germany occupied all of Europe. Americans were dying in battle abroad and sacrificing for the war effort at home.

Total victory was uncertain. But that did not diminish President Roosevelt's optimism and vision.

In his address, he said the Nation had accepted a Second Bill of Rights that, he said, would create ''a new basis of security'' for all.

In this Second Bill of Rights, President Roosevelt cited the right to a decent home, a good education, and dependable health care; the right to fair prices for farmers and free competition for business; and the right to be free of the fears of hardship caused by old age. But first, and most fundamental, he called for the right to work for a fair wage.

Our country should be proud of the extraordinary progress we have made in many of these areas. Together we have made our country better, stronger, and more secure. There is, though, more work to be done, and today I want to focus on President Roosevelt's call for a fair wage.

No value is more fundamental to the American character than the value of work. No ideal is shared so widely or cherished so deeply.

No principle binds us more closely to the generations of Americans who built up our country, and the millions of new Americans who came to our shores to join in the effort. And no conviction so unites the conservative and liberal traditions of our Nation.

Ronald Reagan once said that:

> People in America value family, work, and neighborhood. These are the things we have in common socially and politically. When it comes to the bottom line, all of us are striving for the same thing—a strong and healthy America and a fair shake for working people.

There is a fundamental American truth in those words—working people deserve a fair shake. It has always been the promise of our country, and as we debate legislation here in the Senate, we should do all we can to give life to that promise.

We should make certain that no American who works full-time lives in poverty. Unfortunately, the gap between promise and reality is widening. Among full-time, year-round workers, poverty has doubled since the late 1970's to 2.6 million workers. All told, the working poor are raising 9 million American children.

Moreover, as recent work by the Family Economic Self-Sufficiency project shows, the level of income it now takes just to pay the basic bills is far above what we consider to be the poverty line. No working American wants a handout. These families are playing by the rules. But as hard as they work, they cannot escape the grip of poverty.

A few weeks ago a Sioux Falls family sent me a letter. The father works 56 hours a week as a skilled welder. His wife is a substitute teacher who only works part-time so she can care for her son, who suffers from autism and diabetes. They live in a 20-year-old mobile home that has sinking floors and a leaking ceiling. They wrote:

> We are facing possible foreclosure. Lights, heat, phone, etc. are all 60 plus days past due and on the verge of disconnection. . . . Medical bills have been turned over to a collection agency.

Their final question was: ''Now what?''

They feel trapped. Since they can't afford insurance, their son's medical bills have erased their savings and destroyed their credit. Without good credit, interest payments eat up much of their income. And without affordable child care, the family's mom can't shift to full-time work, which could help lift them out of poverty.

They are working as hard as they can and want to work even harder. But that doesn't seem to be enough. They are farther away from President Roosevelt's vision today than when they first wrote to me. It's in our national interest not to look away from this difficult problem, but to face it squarely and honestly.

If the people who work hard don't get a fair shake, then our Nation risks losing an essential value that has contributed to America's excellence and ongoing success. We cannot let that happen. We should not kid ourselves and pretend this is an easy problem. It is not. It is enormously complicated. But there are things we can and must do.

First, it is important that American business leaders live up to their responsibility as good corporate citizens and share the benefits of increased productivity with their workers, not just their shareholders. The Chief Economist at Merrill Lynch recently noted that there's been a notable ''redistribution of income to the corporate sector.'' While salaries have remained flat over the past 4 years, corporate profits now occupy a greater share of our GDP than at any point since tracking began nearly 60 years ago. We are moving in the wrong direction, and leaders in the private sector have a responsibility to help us move back in the right direction.

Here in Congress, we also have a responsibility to address the problems confronting the working poor, and we should start by requiring a long overdue increase in the minimum wage. Today, the minimum wage of $5.15 per hour is worth $3 less than it was in 1968. Americans who work at the minimum wage for 40 hours a week, 52 weeks a year, still fall $5,000 short of the poverty line. That means, as the Sioux Falls family knows, that adequate housing, enough food to eat, health insurance, and college funds are the stuff of fantasy, not reality. In the time we have left this year, we should increase the minimum wage to $7. That won't solve all our problems, but it is a beginning.

We should also revisit the Earned Income Tax Credit. It was created 20 years ago as an incentive to help working families lift themselves out of poverty through hard work. President Reagan called it the ''best anti-poverty, the best pro-family, the best job creation measure to come out of Congress.'' I agree. Now we need to expand it, so that every American child grows up seeing that work is rewarded and respected.

We should also make sure all families receive their fair share of the child tax

credit. Extending the credit to all working families would restore a basic level of fairness and offer millions of working families the same child tax credit given to those higher up the income ladder.

We must also acknowledge that despite the many benefits of globalization, it has placed downward pressure on low income wages. We won't make progress if our wages fall faster than the prices for the products we need.

''What do the American people want more than anything else?'' President Roosevelt asked in 1944.

This was his answer:

To my mind, they want two things: work, with all the moral and spiritual values that go with it; and with work, a reasonable measure of security. . . . Work and security. These are more than words. They are more than facts. They are the spiritual values, the true goal toward which our efforts should lead.

That was the challenge 60 years ago, and it remains a central challenge today. It is, as President Roosevelt said, ''our duty.''

I hope we can all join together to make that vision a reality for millions of hard-working and honest Americans.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, how much of our morning business time has elapsed?

The ACTING PRESIDENT pro tempore. There are 22 minutes remaining; 8 minutes has elapsed.

## THREE YEARS OF PROGRESS

Mrs. HUTCHISON. Mr. President, I want to talk today about the 9/11 Commission report, the war on terror, and the progress we have made since we were attacked 3 years ago in this country.

For years, terrorists have attacked the United States with little or no reaction from us. We have highlighted time and time again the trail of terror that led to September 11, 2001.

In 1993, terrorists bombed the World Trade Center, killing 6 people and wounding more than 1,000. It is still not fully solved.

In 1996, terrorists bombed the U.S. military living quarters at Khobar Towers, Saudi Arabia, killing 19 brave Americans and wounding scores more—never solved.

In 1998, followers of Osama bin Laden attacked U.S. Embassies in Kenya and Tanzania, killing and wounding hundreds—never solved.

In 2000, Osama bin Laden's followers attacked the U.S.S. *Cole* in a harbor in Yemen, killing 17 sailors and wounding 39 more—not solved.

Sadly, it took four hijacked airplanes being turned into weapons of mass destruction and the loss of nearly 3,000 innocent Americans and visitors to our country for us to resolve that we had been attacked, our way of life had been attacked, and the United States of America is going to fight back. We are in a war on terrorism.

The 9/11 Commission is going to report on Thursday, and we know there will be blame for everybody about the failure of our intelligence capabilities. The administration of President Bush provided unprecedented access and cooperation to the Commission because the President said we want to know what went wrong so we can make it right. The President himself said:

The 9/11 commission will issue a report this week and will lay out recommendations for reform of the intelligence services of the United States. I look forward to seeing those recommendations. They share the same desire that I share which is to make sure that Presidents and Congress get the best possible intelligence. I have spoken about the reforms, and some of the reforms are necessary—more human intelligence, better ability to listen and see things and better coordination among the various intelligence gathering services.

This is what President Bush said about the 9/11 Commission. He went further to say:

Based on published accounts, we expect the commission report will show that government institutions failed to adapt to the threat of terrorism over more than a decade, enabling terrorists to exploit dangerous weaknesses in our defenses. We expect the commission to confirm that the blame for the 9/11 attacks lies squarely and exclusively with al-Qaida. It is clear as the threat of international terrorism evolved over more than a decade that our national security and counterterrorism institutions did not resolve to meet the threat under both Republican and Democratic administrations, Republican and Democratic Congresses. The kind of systematic changes and reform that might have made it more difficult for the terrorists to strike on 9/11 did not take place.

We have established that we can put the blame everywhere—in Congress, with Republicans, with Democrats, with administrations of the past and administrations of the present. We have taken some steps already as the Commission hearings have resolved.

We have taken the steps of implementing a new policy on terrorism by holding to account terrorist groups and the states that sponsor them and not allowing dangerous threats to gather overseas unchecked. We have cut off their money supply in many instances where we could with cooperation from allies.

We have transformed the FBI into an agency focused on preventing terrorist attacks through intelligence collection and other efforts while also trying to help it perform its traditional role as a world-class law enforcement agency for investigating terrorism and other crimes.

We conducted the largest reorganization of the Federal Government since 1947 by creating the Department of Homeland Security, bringing unparalleled focus and resources to homeland security efforts.

We have dramatically increased security on airplanes and other transportation systems on our borders and in our ports, providing significantly increased support for America's first responders.

We have broken down the unnecessary ''wall'' between law enforcement and intelligence gathering with the USA PATRIOT Act and with internal procedures and guidelines that are reformed so that our intelligence agencies and our law enforcement agencies can do their job without artificial restrictions that would keep them from doing something as simple as tracing through cell phones potential terrorists who are planning some kind of action against innocent law-abiding Americans.

We are going to challenge these security issues. We are not going to ignore them. We are not going to wait for a future tragedy.

Recently, President Bush articulated three commitments in our strategy for peace.

First, we are defending the peace by taking the fight to the enemy. We are not sitting here waiting for the enemy to come back to America; we are taking the fight where the enemy is. We are taking the fight to the Taliban resurgents in Afghanistan. We are taking the fight to Iraq where, Heaven knows, we have seen the brutality of Saddam Hussein in his support for terrorists by giving $25,000 rewards to suicide bombers in Israel.

Second, we are protecting the peace by working with friends and allies and international institutions to isolate and confront terrorists and outlaw regimes. We are laser-beam focused in the war on terrorism.

We are working with the United Nations, the International Atomic Energy Agency, and other international organizations to take action for our common security. We are not facing a security threat just in the United States; we are facing a security threat to every freedom-loving country. Every country that lives in freedom is a target. We have seen it in bombings throughout the world, and recently in Spain.

Third, we are extending the peace by supporting the rise of democracy.

It is absolutely proven that in democratic and successful societies, men and women will not allow the malcontent and zealots and murderers to stay among them. They turn their labor to rebuilding and to better lives.

Is there one person in the world who has children who doesn't want the best for them? Is there a person in the world who doesn't want an education for their children so their children will have a better life than they did? Is there one person in the world who doesn't want that? It is clear that the way to get education for every child and a quality of life that would be good for every child to grow up in is democracy and freedom. That is how you get it. That is what we are trying to provide. We are doing it in places such as Afghanistan and Iraq where they haven't known freedom for years. We have some successes.

Look at Afghanistan. Three years ago, Afghanistan was the home base of

al-Qaida, ruled by the Taliban, the most cruel of regimes imaginable. The things they did to women and children are unimaginable in our country. Today, Afghanistan is looking at a presidential election this fall. The terror camps are closed. The Afghan Government is helping us to hunt down the remnants of the Taliban. The American people are safer because Afghanistan is now stabilized with a great President, Hamid Karzai, who wants for his people the same thing that everybody wants—freedom, democracy, education, good health care, jobs, and an economy. He is trying to provide it, and we are helping him, and we are safer because of it.

Let us look at Pakistan. Three years ago, Pakistan was a country that openly recognized the Taliban. Al-Qaida was active. They were recruiting in Pakistan. The United States was not on really good terms with Pakistan at that time, but today, we see a great ally in Pakistan. President Musharraf is a friend to our country. He is making reforms in Pakistan and trying to root out the same Taliban/al-Qaida network in the remote regions that have terrorized Afghanistan and, in fact, have hurt the people of Pakistan as well. It was Pakistan that helped us capture Khalid Shaikh Mohammed, the planner of the 9/11 attack on America.

Who could say we are not safer today because we have an alliance with Pakistan and an alliance and a stake in the stability of Afghanistan?

Iraq, 3 years ago; where were the people of Iraq? The ruler of Iraq was an enemy of our country. He was a mass murderer. He had used weapons of mass destruction on his own people.

Today, we see pictures of him in a system of justice which he never allowed his own people. But he is going to have justice. It is going to be given justice by the people he treated so horribly. The people of Iraq are seeking justice.

The people of America are safer because Saddam Hussein is gone. He is not giving $25,000 to the family of a suicide bomber to blow up a bus in Israel and kill children. We are safer because there will be elections in Iraq. By next January, we will see the people of Iraq speaking about their own government. In fact, U.N. Secretary Kofi Annan has named a career diplomat to the post that has been vacant since suicide bombers blew up the U.N. headquarters in Baghdad last August, killing the last U.N. representative there. America is safer because Saddam Hussein is behind bars and because his sons are no longer torturing and maiming hundreds of people in Iraq.

Saudi Arabia, 3 years ago; Saudi Arabia had terrorists within its midst and they were looking the other way. Today, Saudi Arabia says they are trying to find the attackers. They are finally realizing the growth of these terrorist regimes hurt their people, too. We are going to try to help Saudi Arabia in every way they ask us to help, to root out the terrorists who have fomented in their country.

If there is no place for the terrorists to hide in the Middle East, and if people are starting to see an economy, and if there are democracies emerging in places such as Iraq, it will change the course of the whole Middle East.

Libya, 3 years ago; Libya, a longtime supporter of terror, was spending millions of dollars to acquire chemical and nuclear weapons. Today, thousands of Libya's chemical munitions have been destroyed. The Libyan Government finally saw that the civilized world was not going to sit back any longer and let it continue to proliferate weapons of mass destruction. Muammar Qadhafi, in Libya, said: We are going to abandon any chance for nuclear weapons to be produced in our country.

We are seeing the breakdown of the terrorist regimes, one by one, in the Middle East. Why are we seeing the regimes go away and the beginnings of democracy come forward? Because our President has been focused. He has not relented in the war on terrorism. He has not relented in his responsibility to protect the people of America. Everything he has done has been with one goal in mind and that is to protect the people of America. That is the President's focus and that is why we are as far along as we are.

Let me read from an AP story about the success of the newly emerging Iraq stock exchange. From the AP on Sunday, July 18:

> The miniature Liberty Bell clanged. Elbows flew. Sweat poured down foreheads. Sales tickets were passed and, with the flick of the wrist, 10,000 shares of the Middle East Bank has more than doubled in value.
>
> The frantic pace Sunday of those first 10 minutes of trading typified the enthusiasm behind the Iraq Stock Exchange—a new institution seen as a critical step in building a new Iraqi economy.
>
> In just five sessions, trading volume has nearly quadrupled and the value of some stocks has surged more than 600 percent. . . .
>
> The exchange's chief executive, as he eyed the activity on the trading floor, which is housed in a converted restaurant because looters had gutted the old exchange, looked out and said: How can I not be excited about this?

The unofficial figures of the day's trade tell the story. Over 10 million equivalent dollars in stocks changed hands, reflecting the movement of 1.43 million shares—although only 27 companies are listed on the exchange.

That is just one more step in the stabilization of Iraq. America is going to stay to help Iraq as they recover from the brutal regime of Saddam Hussein. As long as we are asked to stay to stabilize, we will be there. When we are no longer needed with the allies that are staying with us, we will happily leave that country in the hands of trained military personnel for security and in the hands of elected democratic leaders selected by the vote of the people.

Today, we see the emerging of the temporary government of Sunnis and Shiites and Kurds, working together to create a unified Iraq that will be able to hold elections for that country.

We have more to do. We all know we have more work to do. Our President has done so much in 3 years, rebuilding the areas of New York that were hit by terrorists, building up our security network, spending billions for homeland security, focusing on airline, airplane, and airport security, port security.

We live in a big country. We live in a free country. It is hard to get control in a free country of every potential site that a terrorist might attack. But because we are free, the people of our country are stepping up to the plate, too; they are helping. They are being vigilant. They are looking for things that are strange and reporting them. We believe attacks have been averted because of the vigilance of the President and Congress and the people of the United States.

We must remain a united country. When I hear some of the debates in the political arena, it is as if people are saying, we are two different countries; we are a divided country.

We are not a divided country. We need leaders who recognize we are not a divided country. We are a unified country. We need leaders who will unify America and talk to the people about what we can do together that will make us stronger, standing up and celebrating our diversity, showing how it can work in a free and democratic society. That is what we are proving by leading as unifiers.

We have a President of the United States who is leading for security and unification of our country. We must work with the President as a united Congress to combat terrorism for the security of our people.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New York is recognized for 15 minutes.

## THE 9/11 COMMISSION REPORT

Mr. SCHUMER. Mr. President, I rise today to discuss the imminent release of the final report of the 9/11 Commission. The Commission's report will be the final product of a long and comprehensive process that has at times deeply touched the families of those who were lost on 9/11 and has questioned the ability of our Government to defend against a new terrorist threat.

As the Commission issues its report, the state of the Union on homeland security is not good enough. Are we better off than we were on 9/11, as my colleague from Texas has mentioned? Yes, we are. Are we doing everything we can to protect ourselves? Absolutely not. Are we putting the same energy in the homeland to defend ourselves that we are putting into the war overseas? No, unfortunately not.

Time and time again, on homeland security, we are not doing enough. And the view of the White House is that it takes a back seat to fighting the war on terror overseas. Dollars that are needed for so many projects are not

forthcoming in this administration's budget or from the Congress, for that matter. That is a bad thing and a sad thing for America.

That is why this report that the Commission is issuing is so important. It is my hope, it is my prayer, that it importunes us to do more so that another 9/11 will never happen.

First, I would like to address the Commission itself. They have done a remarkable job. This Commission, as we know, was created with a mandate of exploring how the United States became vulnerable to a terrorist attack as large and as complex as that attack which so hurt us on 9/11. The Commission was resisted by the White House and by some in this body. But it was the families that forced it to happen: the four brave widows from New Jersey who said they would not rest until there was a commission. Those families and many other families of the victims in New York, my State, were relentless in not only forcing a commission to occur, but in forcing it to be a bipartisan commission, a nonpolitical commission that had full power to get to the bottom of what happened.

I can tell you, having spoken to many of the family members, they only had one mission. They are Republicans and Democrats; they are conservatives, moderates, and liberals. Their mission was a simple one. Walking with holes in their hearts because their loved ones had been taken from us in such a cruel event, their mission was a generous one, I might say a noble one: that this never happen again. Their view, which I think America has accepted, is that the only way we can prevent a future 9/11 is to learn of the mistakes that were made before 9/11.

The Commission was led by two remarkably nonpartisan figures: Governor Thomas Kean, Republican of New Jersey; Congressman Lee Hamilton, Democrat of Indiana. They steered the Commission away from finger-pointing, away from blame, away from partisanship but, rather, toward ''just the facts, ma'am,'' as Jack Webb said on ''Dragnet.'' Just the facts is what they wanted to find out so we could then learn of the mistakes that were made—not to excoriate, not to blame, but, rather, to correct and make sure it does not happen again.

The Commission dutifully pursued this task, despite resistance from many quarters in Washington. It did not shirk from even the most troubling aspects of its investigation.

The final report is about to be released this week. It is important that every one of us, that every American, learn of its findings, and we make sure our Government, without delay, examines those recommendations and then acts to make us safer still.

There are a couple of things that have come out already about what the Commission wants. They have recommended there be a Cabinet level appointee of the President to be in charge of all intelligence. It makes eminent sense, in my judgment. We cannot even count the number of intelligence agencies there are. And so many of them are too interested in turf. One agency finds out something and does not tell another so they might gain a leg up. There is a lack of coordination, even the fact that their computers do not talk to one another. It all hurts every one of us in terms of our desire to be secure and make sure another terrorist attack does not occur.

By having one Cabinet officer in charge of all intelligence, with budgetary authority, that Cabinet officer can enforce a regime which will require all of the agencies to cooperate with one another.

There will also be some structural changes within the agencies. In the FBI, an agency I have been very interested in, I am hopeful the Commission will recommend something I know they considered, and I think may well recommend, which is there be a separate part of the FBI dealing with counterterrorism.

The FBI's mission in the past has always been to find out who did crimes and prosecute them. The FBI does a very good job of that. But counterterrorism is different. We have to prevent crimes. It requires a different mentality. It is my hope we will rearrange the FBI. Some have recommended a separate agency for counterintelligence. I think that may go too far. But to have a reorganization within the FBI makes a great deal of sense.

Now, these are a few of the recommendations that will come out. There are going to be many more. Let me just say, the tendency of some here in Washington, some in the White House, when they hear news they disagree with or that points to an error that was made, instead of responding on the merits and saying, Here is why you are wrong, or here is why we want to do it differently, they disparage the messenger. They call them not patriotic. They call them political. They call them partisan.

This Commission, if ever, is not partisan and is not political. We should listen to their recommendations, and I hope there is not delay. Some are going to say: Let's wait until next year on their clear-cut recommendations. If the rumors are correct, the Commission will be unanimous. All the Democrats and all the Republicans will have one set of recommendations. So, again, it is not partisan, and there is an equal number of each party on the Commission. We should not wait. To wait until next year—a new Congress, maybe a new President—will delay us. These recommendations should not be put in a political context and should not be looked at in light of the political calendar that is upon us. We should immediately move, in September, when we return, to enact these recommendations. We may choose to modify them. Perhaps the body will reject them.

There is a lot of talk that the Defense Department and the CIA will oppose having an overseer above them. We will have to debate that. I hope we listen to the Commission. But to delay would be delaying our safety.

So I hope and pray we will move quickly and move forward and not either kneecap the Commission—because already I saw some column by a very conservative gentleman who said: The Commission, forget about it. All this writer was interested in was saying the President did everything right.

Whether you are a Democrat or Republican, whether you are a liberal or a conservative, we know that neither this President nor prior Presidents of both parties did everything right or we would not have had a 9/11.

So, again, let us not put our defensive shields up and hunker down for a fight. Let us make this one of those rare moments of bipartisanship, as the Commission itself has, and adopt their recommendations.

Now, let me say, as somebody who cares a great deal about homeland security, there are a number of areas where we are not doing enough. I don't know if the Commission will address these, but I hope so. We have done a pretty good job on air security. Flying is a lot safer and less prone to terrorism today than before 9/11. But we have not done everything there. One big problem is shoulder-held missiles. We know terrorists have them. God forbid, they smuggle some of those into the United States and shoot down 5 or 10 planes at once in Boston, or New York, or Houston, or Seattle, or Denver, or Chicago. We are not doing enough there.

We are doing far too little on port security. The percentage of the big containers that come into our Pacific ports, Atlantic ports, and gulf coast ports that are inspected is too few. The technology has not been implemented as quickly as it might be.

On truck security and rail security, Madrid was a wake-up call. We are far behind what we should be doing.

The unfortunate problem is that the terrorists have access to the Internet just as we all do. They are on it diligently looking for where we are weak. If we strengthen air security, they will look to the ports. If we strengthen the ports, they will look to the rails. So we have to have a multifront war. We are not doing enough.

On so many of these issues, as somebody who comes from New York and still lives with the grief that so many of my constituents feel, I can tell you we are not doing close to enough. Oftentimes, it is not that we don't have the technology and not that we don't have the ability; it is that we don't put in the money that is needed. I think if you ask most Americans what their priorities are, homeland security would be at the top of the list. Unfortunately, we get a lot of talk and not much action.

Another place where we are way behind is how we give out our homeland security funds. To its credit, the first

year, the administration really allocated the money on the basis of need. My State of New York got about a third of the funds, which is probably right. But then they abandoned ship. Once Mitch Daniels left, who was head of OMB, a true conservative who didn't want to spend money, these homeland security funds became pork battle and they are spread thin.

I say to the Chair, I know everybody has some needs, but to have his State get, on a per capita basis, far more dollars than mine in terms of homeland security, I don't think seems right, much as I want to protect both. Over and over again, on homeland security funds, we have not allocated it to the places of greatest crisis. That, too, is a problem.

So the bottom line is this: I hope this report will be what it should be, a wake-up call—a wake-up call that, on intelligence, our agencies are too disparate, they don't talk to one another or coordinate with one another. They are not doing the job they should and we have to correct that. I hope it is a wake-up call that here at home on homeland security we are not doing enough. It is common knowledge that, as so many say, to win a basketball or a football game you need both a good offense and a good defense. We have an offense out there all right. I have been largely supportive of that offense. But we are not doing enough on the defense. You cannot win a game without a good defense. I hope it is a wake-up call on defense as well. I hope it is a wake-up call.

I hope the report will be comprehensive, and that it will talk about so many things—immigration, rail, port, truck security, and air security. It will talk about all of the things that we did wrong before 9/11. Again, instead of finger-pointing, instead of seeking blame, instead of ducking, let's hope this report importunes the Congress, importunes the White House to one of its finest hours in that we spend some time in September, after having had plenty of time to analyze the report, to implementing its recommendations—at least the ones the Congress sees fit. It would be unacceptable for us to just look at the report for a day and then do nothing. That would be a dereliction of our duty to our citizens to do what we are required to do, that which the Constitution requires us to do—protect the security of Americans.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, how much time do I have under the order?

The ACTING PRESIDENT pro tempore. Ten minutes.

## LEAK INVESTIGATION

Mr. HARKIN. Mr. President, I am here on the Senate floor again today to remind my colleagues, and those who may be watching on C–SPAN, that it has now been 1 year and 6 days since two high-ranking White House officials leaked the name of agent Valerie Plame, a CIA agent, to a columnist by the name of Robert Novak, who then published it in his column. Two high-ranking White House officials leaked this name to more than one reporter. It is interesting that no other reporters reported it except Robert Novak.

Here we are 372 days—1 year and 6 days after this crime was committed. We still have no answers about who in the White House was responsible for this leak. We still have no assurance from the President or the Vice President that those who are responsible do not still remain in high-ranking decision making roles in the White House. They are probably still there.

This administration has failed to find and punish the officials responsible for this criminal action. Ms. Plame's identity was leaked by senior White House officials only 8 days after her husband questioned in print one of the key administration justifications for the war in Iraq; that is, that Iraq had sought to buy uranium ore from the country of Niger.

This blatant defiance of public accountability weakens our country. It damages our international credibility and undercuts our human intelligence efforts at a time when they are needed more than ever. It is just one example of the way this administration has weakened America's standing in the world.

I will speak further to this issue during the remainder of the week. Again, I will continue to point out how this has weakened America. Last month, for example, a group of 26 former senior diplomats and military officials who worked for Presidents of both parties, Republican and Democrat, issued a compelling statement about the damage the administration has done to our security. Their statement said:

> Our security has been weakened.

It said further:

> [The] Bush administration has shown that it does not grasp the circumstances of the new era and is not able to rise to the responsibility of world leadership in either style or substance.

When a former Ambassador, Joseph Wilson, raised issues that questioned part of President Bush's rationale for the war in Iraq, this administration attacked him politically, and then went after his wife. And the smear campaign continues, as we have seen in recent columns and four statements this week.

I am not here to criticize or defend former Ambassador Joseph Wilson. I am here to make the point that when he dared to question whether one of the President's justifications for the war in Iraq was correct, the White House was so intent on discrediting him that they were willing to expose the identity of an undercover CIA agent in an act of vicious political retribution. They were willing to break the law, and to damage the relationship between the White House and the intelligence community. This administration purposefully stretched intelligence data they knew to be questionable to justify the war to the American people and to Congress.

According to the Senate Intelligence Committee report, in February of 2002, the CIA sent former Ambassador Wilson to Niger to investigate claims that Iraq had sought to purchase Nigerian uranium ore. His trip and subsequent debriefing neither verified the claim, nor disproved it. Following his trip, the intelligence community continued efforts to verify the claim.

In October of 2002, the White House sought to include that claim—that Iraq had tried to buy uranium ore from Niger—in a policy speech by the President that was to be given in Cincinnati. But the CIA had such serious concerns about this being in his speech that they sent a memo to the White House seeking changes. The CIA did not think these concerns were being taken seriously, so the following day, they sent a second memo that urged the information be deleted from the President's speech.

So now we have two memos to the White House on subsequent days asking that this be taken out of his speech because ''the evidence was weak'' and that the CIA had told Congress that ''the Africa story was overblown.'' That same day, CIA Director Tenet personally called Deputy National Security Adviser Stephen Hadley to express his concerns about using this information in the speech. And guess what. It was taken out of the President's speech by Stephen Hadley, the Deputy National Security Adviser.

That is how concerned the CIA was about this information and about the credibility of the information: two memos and a personal call from the Director of the CIA to Deputy National Security Adviser Hadley. It was taken out of the President's speech. This is October.

Between October and January, both the State Department and the CIA obtained copies of documents that purported to be a uranium ore purchase agreement between Iraq and Niger. As I heard, these documents came from someplace in Italy. But the State Department determined the documents were probably a hoax.

So between October and January, there was even more reason to doubt the credibility of these uranium ore claims. Nonetheless, when the President took the floor in the House Chamber to give his State of the Union Message, what happened? Those claims were included in his speech.

Who was the person responsible for vetting, for clearing these kinds of statements in the President's State of the Union Message? Guess what, it was Stephen Hadley, the Deputy National Security Adviser. He was in charge of vetting the national security issues for the President's State of the Union speech. This was the same person who just a couple of months before had received two memos and a personal

phone call from Mr. Tenet, the head of the CIA, telling him these claims were highly suspect. But these words made it into the President's State of the Union Message. Thus, the White House, in its determination to wage war, included information they knew to be questionable to justify the war in Iraq.

Six months later, when Joseph Wilson questioned that information, two senior White House officials undertook a campaign to destroy the career of his wife. Who would have known that Valerie Plame was married to Joseph Wilson? Maybe some in the CIA knew it. I don't know who else knew it. They had different names. She was deep undercover. She was not given diplomatic immunity. She was very deep undercover in the CIA.

In the process of blowing Ms. Plame's cover, these White House officials cost the people of this country a 20-year investment in Valerie Plame. They placed into jeopardy her entire network of contacts and CIA operatives. They caused the entire intelligence community to question whether they might be next and be exposed. Thus, they weakened the reputation of this country at home and abroad.

Don't take my word for it; take the words of three former CIA high-ranking officials. Vincent Cannistrano, former chief of operations and analysis at the CIA counterterrorism center, said of the Plame disclosure:

The consequences are much greater than Valerie Plame's job as a clandestine CIA employee. They include damage to the lives and livelihoods of many foreign nationals with whom she was connected, and it has destroyed a clandestine cover mechanism that may have been used to protect other CIA non-official covered officers.

Or the words of James Marcinkowski, a former CIA operations officer, he said:

The deliberate exposure and identification of Ambassador Wilson's wife by our own Government was unprecedented, unnecessary, harmful, and dangerous.

Larry Johnson, a former CIA analyst, said:

For this administration to run on a security platform and to allow people in this administration to compromise the security of intelligence assets I think is unconscionable.

No one listening to these three men could have any doubts about the damage this act has done to our intelligence community and the extent to which this has weakened America.

We have seen that this administration has put relentless pressure on the intelligence community to justify the war. I have been informed that Vice President CHENEY personally went to the CIA headquarters—personally went across the river in Virginia to the CIA headquarters—at least eight times in the months when this intelligence data was under review. The Los Angeles Times reported last week that the Vice President's office even prepared its own dossier of all the information they thought should be used by the Secretary of State to justify the war, much of which the State Department rejected.

My question is, what was Vice President CHENEY doing visiting the CIA over eight times? This is unprecedented—unprecedented.

And my final question is this: Where is the same drive and determination by the President or the Vice President when it comes to finding those responsible for the breach of national security this leak caused?

The people who exposed Valerie Plame broke the law. Title 50 U.S.C., section 421. It is very clear on this: Any person who has access to classified information that identifies a covert agent shall be fined or imprisoned not more than 10 years or both.

I ask unanimous consent that the exact words of 50 U.S.C., section 421, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TITLE 50.—WAR AND NATIONAL DEFENSE

CHAPTER 15.—NATIONAL SECURITY, PROTECTION OF CERTAIN NATIONAL SECURITY INFORMATION, 50 USC § 421 (2004)

§ 421. Protection of identities of certain United States undercover intelligence officers, agents, informants, and sources.

(a) Disclosure of information by persons having or having had access to classified information that identifies covert agent. Whoever, having or having had authorized access to classified information that identifies a covert agent, intentionally discloses any information identifying such covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such covert agent and that the United States is taking affirmative measures to conceal such covert agent's intelligence relationship to the United States, shall be fined under title 18, United States Code, or imprisoned not more than ten years, or both.

(b) Disclosure of information by persons who learn identity of covert agent as result of having access to classified information. Whoever, as a result of having authorized access to classified information, learns the identity of a covert agent and intentionally discloses any information identifying such covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such covert agent and that the United States is taking affirmative measures to conceal such covert agent's intelligence relationship to the United States, shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(c) Disclosure of information by persons in course of pattern of activities intended to identify and expose covert agents. Whoever, in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States, discloses any information that identifies an individual as a covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such individual and that the United States is taking affirmative measures to conceal such individual's classified intelligence relationship to the United States, shall be fined under title 18, United States Code, or imprisoned not more than three years, or both.

(d) Imposition of consecutive sentences. A term of imprisonment imposed under this section shall be consecutive to any other sentence of imprisonment.

Mr. HARKIN. Mr. President, this law does not make any exceptions. It does not say, you can be fined or put in prison unless your spouse has gone against the administration's policy. It does not have that in here. No one is excused, not even, in my opinion, Mr. Novak.

One year and 6 days later we are still waiting for some action to be taken against those who broke the law. I have said repeatedly, if the President wanted to know the identity of these high-ranking officials, he could have done so within 24 hours. Clearly, Mr. Bush does not want to know the identity of the leakers, and when he was asked about it, he just dismissed it out of hand, smiled about it, said: There are a lot of leakers, who knows, a lot of people in the administration, and he just brushed it off. Where is Mr. Bush's sense of outrage that two people would do this and so weaken America's national security?

I think getting these answers means only one thing: The President of the United States, Mr. Bush, the Vice President of the United States, Mr. CHENEY, should be put under oath and filmed at the same time and deposed and asked these questions. One might say: Senator, that is an awful drastic step to be taken to put the President and Vice President under oath. I remind my colleagues that just a very few years ago a former President was put under oath and questioned under oath and filmed, and we sat in this Chamber and watched on television sets the deposition of former President Clinton when he was put under oath.

Regardless of how one may have felt about the impeachment one way or the other, I think the fact that the President was put under oath and questioned sent a signal very loudly and clearly to the people of this country: No one is above the law, not even the President of the United States. If it was good enough for a former President, it is good enough for this President.

The ACTING PRESIDENT pro tempore. The Senator has consumed the 5 minutes allocated to Senator REID as well.

All time has expired on the Democratic side.

Mr. LEAHY. Mr. President, am I correct that we will now go to the Myers nomination?

## CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

## EXECUTIVE SESSION

### NOMINATION OF WILLIAM GERRY MYERS III TO BE A UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

The ACTING PRESIDENT pro tempore. Under the previous order, the

Senate will proceed to executive session and resume consideration of Calendar No. 603, which the clerk will report.

The legislative clerk read the nomination of William Gerry Myers III of Idaho to be United States circuit judge for the Ninth Circuit.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 12:30 p.m. shall be equally divided for debate only between the chairman and the ranking member or their designees.

The Senator from Vermont.

Mr. LEAHY. Mr. President, on this side I have how much time?

The ACTING PRESIDENT pro tempore. There is 34½ minutes.

Mr. LEAHY. Mr. President, not long ago the Democratic leadership reached an agreement with the White House that both sides believed was reasonable and fair. Actually, it was the Democratic leadership, the Republican leadership, and the White House. We agreed to hold votes for 25 of the President's judicial nominees, including one that was so controversial that he received what might have been the highest number of ''no'' votes ever from both Republicans and Democrats for a confirmed judge.

Now in return for those good-faith votes, the White House agreed not to make any more recess appointments of judges for the remainder of the President's term. So we fulfilled our end of the deal. When we were in the majority during 17 months, we moved 100 of President Bush's nominees. In about 27 or 28 months, the Republican majority has moved another 98 or 99. Of course, we brought up for consideration and agreed to consideration of all 25 of the judicial nominees we had agreed on with the President.

Probably on the basis that no good deed goes unpunished, especially with the most political, poll-driven administration I have seen in the time I have been here, the day after the debate and this extremely closely divided vote on the last of the group of those 25 judicial nominees, one many Republicans voted against, President Bush flew to North Carolina and then on to Michigan in an effort to politicize this issue anew. It appears that nominating and appointing his most ideological, partisan slate of judicial nominees is not enough for this President.

Besting the confirmation record of Ronald Reagan, former President Bush, and President Clinton does not satisfy him. The President continues to insist that every nominee, every nomination he makes to a lifetime, well-paying position, must be confirmed by the Senate because he is President, making the nominations. This ignores the fact that that has never been the case. Even President George Washington, the most popular President in this Nation's history, saw the Senate reject his nominees. President Franklin Roosevelt, who carried all but two States in the country in his reelection bid, with a heavily Democratic Senate, saw them reject his court-packing plan.

Like the recent abuse of the Constitution for partisan political purposes, I believe the President is trying to turn the independent Federal judiciary into an arm of the Republican Party. He has politicized the filling of judicial vacancies beyond anyone who preceded him and now we see he is exploiting this important Presidential authority as a campaign issue.

The independent Federal judiciary should not be an arm of the Democrat party or the Republican Party, and the American people should not fall for it. Facts are stubborn things. No amount of demagoguery overcomes the facts. The Senate has now confirmed 198 judges.

We have objected to a small handful of the most extreme or unqualified nominees. The President uses sharp rhetoric about ''activist judges,'' yet he nominates activist candidates from the far right wing of his party. When we have felt it necessary to draw the line at some of these candidates, we have done so to protect the rights of the American people from being undercut by partisan and ideological activists. We have tried to ensure the independence of the federal courts so that this Administration and its enablers in the Senate would not successfully turn our courts into an arm of the Republican Party.

We have cut vacancies on the federal judiciary to one quarter of what Republicans maintained during the Clinton Administration. Let me repeat that: Today, vacancies are one fourth what they were when Republicans were blocking dozens of President Clinton's judicial nominees. We have even reduced circuit court vacancies by more than 60 percent. By contrast, under Republican Senate leadership during the Clinton Administration, circuit court vacancies more than doubled from 16 to 33. From the high of 110 vacancies in the federal system that Republicans maintained during the Clinton Presidency, the federal courts are now down to 27 vacancies. There are more active judges serving on the federal courts today than at any time in our nation's history.

Not that the facts will deter the President and Republican partisans during this election year. This is another area on which this President has been a divider and not a uniter, in spite of the promises he made during his last campaign. Instead of working with us and uniting all Americans and strengthening their confidence in our courts, he and his supporters criticize the courts and attack the Senate for fulfilling its constitutional responsibilities and standing up to the most extreme of his nominees. The Senate has withheld consent only from the worst of his nominees, but he insists on sending more nominees who divide the Senate and the American people.

The nomination before us on which the Republican leadership insists the Senate devote three days is perhaps the most anti-environmental judicial nominee sent to the Senate. The nomination of William Myers to the United States Court of Appeals for the Ninth Circuit is an example of how this President has misused his power of appointment to the federal bench. Mr. Myers is neither qualified nor independent enough to receive confirmation for a lifetime appointment to this federal circuit court. His nomination is the epitome of the anti-environmental tilt of so many of President Bush's nominees.

Mr. Myers' hometown newspaper warned that as Solicitor at the Department of the Interior: ''Myers sounds less like an attorney, and more like an apologist for his old friends in the cattle industry.'' He has a record of extremism when it comes to his opposition to environmental protections, having gone as far as comparing the federal government's management of public lands to ''the tyrannical actions of King George'' over the American colonies and arguing that the government is fueling ''a modern-day revolution'' in the American West.

Well, I come from a part of the country that fought a revolution to overturn the tyrannical power of King George, and even though I may disagree with this administration, I do not liken this or any other administration to the tyrannical rule of King George.

I have carefully reviewed the record Mr. Myers has logged in private practice and in the Bush administration. I asked him a series of questions at his hearing in February and later in writing after that hearing. We gave Mr. Myers every opportunity to be heard and to make his case that he would be a fair and impartial adjudicator if he is confirmed to the Federal bench. Unfortunately, the only conclusion I have been able to arrive at is that if he is confirmed he would be an anti-environmental activist on the bench. He has a consistent record of using whatever position and authority he has had to fight for corporate interests at the expense of the environment and at the expense of the interests of the American people in environmental protections.

For 22 years, Mr. Myers has been an outspoken antagonist of long-established environmental protections, usually wearing the hat of a paid lobbyist for industry. At his hearing, he attempted to defend his anti-environmental statements and actions by saying he was just acting as an attorney, ''on behalf of his clients.'' This is not a case of a representation of a defendant in a single case. He has chosen this career for which he has been amply rewarded both monetarily and by positions in the Bush administration.

An attorney also has a duty to follow the law and, on more than one occasion, Mr. Myers' advocacy has pushed the limits of the law. As The New York Times editorialized, Mr. Myers ''regularly took positions that, though legally insupportable, would have had a

devastating impact on the environment.''

As the chief lawyer at the Department of the Interior, Mr. Myers disregarded the law in order to make it easier for companies to mine on public lands—a position consistent with his prior role lobbying for mining interests while he was in private practice. He interpreted the mining law in a way that would have allowed the reversal of Secretary Babbitt's rejection of a permit for Glamis Mining Co. on land in the Southeastern California desert. Fortunately, an independent review by a federal court concluded that Mr. Myers' interpretation was wrong. The court called into question his ability to interpret a statute as he violated ''three well-established canons of statutory construction.'' In addition, he acted without government-to-government consultation with the Quechan Indian Nation, a federally-recognized tribe, or other Colorado River Tribes, before taking action to imperil their sacred places.

As Solicitor General at the Interior Department, Mr. Myers encouraged two Northern California congressmen to sponsor legislation that would have given a private firm eight acres of valuable federal land in Yuba County, CA. Recognizing that the government did not have the right to turn over the land without compensation, he told the landowners that the ''department would support private relief legislation'' to accomplish that goal. The Department has since withdrawn its support for the private relief bill after its own agents produced readily available documents that conclusively proved that the government owned the land.

Mr. Myers' record on the environment would raise serious concerns no matter where he would be sitting as a judge. However, it is especially disturbing given the court to which he has been nominated. William Myers has been nominated to a circuit court with jurisdiction over an area of the country which contains hundreds of millions of acres of national parks, national forests and other public lands, tribal lands, and sacred sites. Judges on the Ninth Circuit decide legal disputes concerning the use and conservation of many of the most spectacular and sacred lands in America and often make the final decision on critical mining, grazing, logging, recreation, endangered species, coastal, wilderness, and other issues affecting the nation's natural heritage. These judges are also the arbiters on treaty, statutory, trust relationship, and other issues affecting American Indian tribal governments, Native Americans, and Alaska Native groups. The Ninth Circuit plays an enormous and pivotal role in interpreting and applying a broad range of environmental rules and protections that are important to millions of Americans, and to future generations of Americans.

At Mr. Myers's hearing, I raised concerns over what might be at stake if he were to be confirmed. At stake is the longstanding acceptance of the Constitution's commerce clause as the source of congressional authority to enact safeguards to protect our air, water, and land. In Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, Mr. Myers submitted an amicus brief arguing that the Commerce Clause does not support the United States Army Corps of Engineers' jurisdiction over isolated, intrastate waters on the basis that they are or have the potential to be migratory bird habitat. Mr. Myers' position raises concerns whether his extremely narrow view of the scope of the Constitution's commerce clause would undermine our nation's environmental, health, safety, labor, disability and civil rights laws.

At stake are environmental protections which can be struck down if taxpayers do not pay polluters, according to the extreme expansion of the takings clause that some judges have begun to adopt. Mr. Myers has taken this extreme view by arguing that property rights should receive the same level of constitutional scrutiny as free speech. His position raises concerns that he will interpret as ''takings'' the very laws implemented by Congress to protect our lands and our environment.

At stake is the true meaning of the Constitution's Eleventh Amendment and the right of citizens to sue to enforce environmental protections. In an era of ballooning government deficits and cuts in environmental enforcement budgets, there is much at stake if courts eliminate or minimize the critical role of ''private attorneys general'' who are needed to ensure that polluters are complying with federal mandates. Mr. Myers has even argued that judges should take a more active role in reducing lawsuits brought by environmentalists by requiring non-profit environmental organizations to post a bond for payment of costs and damages that could be suffered by any opposing party. He wrote: ''Environmentalists are mountain biking to the courthouse as never before, bent on stopping human activity wherever it may promote health, safety and welfare.'' These positions raise concerns that plaintiffs in his courtroom who are members of environmental organizations will not be treated fairly.

For the last four years, the Bush administration has systematically, and often stealthily, set out to undermine the basic safeguards that have been used by administrations of both parties to protect the environment. One way the Bush administration has demonstrated its contempt for our nation's environmental laws is in the court system. A Defenders of Wildlife study covering the Administration's first 2 years noted how its agencies argued in court. Amazingly, in cases where the Administration had a chance to defend the National Environmental Protection Act (NEPA), more than 50 percent of the time it presented arguments in court which would weaken NEPA. Similarly, the Administration argued to weaken the Endangered Species Act (ESA) more than 60 percent of the time.

Despite the Administration's arguments against the environmental laws it is entrusted with protecting, and despite the deference customarily paid to Executive agencies in federal court, the independent federal judiciary, thus far, has generally upheld our longstanding environmental laws. The courts ruled against the Administration's arguments to weaken NEPA 78 percent of the time, and ruled against the Administration's arguments to weaken the ESA an astounding 89 percent of the time. Further illustrating how important the judiciary has become for environmental protection, especially in the absence of a commitment to environmental protection by Executive agencies, the League of Conservation Voters for the first time included a vote on a judicial nominee on its 2003 scorecard of Senate votes. In the past year, our federal courts resisted efforts to weaken the Clean Water Act, the Clean Air Act, and the Endangered Species Act. The courts protected our National Monuments from challenges by extremist groups trying to strip them of their status, upheld air conditioning standards which save energy and money for consumers, and stopped Administration rollbacks that benefited industry at the expense of our forests. The result of these court decisions is that our vital wetlands and rivers are not decimated, diverse species are protected from extinction, and the standards for air quality are brought into compliance with the law.

There are, however, dark clouds on the horizon. There are cases pending where the outcomes could affect whether our air is threatened by toxic chemicals and whether our water and health are threatened by pollution and pesticides. There are cases pending whether to allow snowmobiles in our National Parks, whether to allow the Administration to open up 8.8 million acres of important wildlife habitat and hunting and fishing grounds in Alaska for oil and gas leasing, whether pumping dirty water into the Everglades violates the Clean Water Act, and whether the Administration can open our nation's largest National Forest to logging.

How will these cases be decided? Will the federal courts continue to stand as a bulwark against the administration's assault on environmental protection? Consider that in two recent cases, judges appointed by President Bush dissented, arguing against environmental protections. In one case, a Bush-appointed judge indicated that he might find the Endangered Species Act unconstitutional, and, in the other case, a Bush judge would have ruled to make it harder for public interest groups to prevent irreparable environmental harm through injunctive relief

while claims are pending. What if President Bush succeeds in appointing more like-minded judges and these Bush judges become the majority next time, positioned to strike down vital environmental protections? This is the type of judicial activism against established precedent that President Bush says he deplores, but he nominates and appoints judges who engage in wholesale judicial activism.

The Bush administration has already proposed more rollbacks to our environmental safeguards, aiming to benefit industry at the expense of the public's interest in clean air and water, our public lands, and some of our most fragile wildlife populations. While today we have a Federal judiciary which has in many instances prevented this administration's attempts to roll back important environmental laws and protections, in the future we may not be so fortunate. Today, the appellate courts in this country have tilted out of balance with Republican appointees already in control of 10 of the 13 circuit courts. The American people expect good stewardship of the nation's air, water and public lands, and the American people deserve that. Judges have a duty to enforce the protections imposed by environmental laws. The Senate has a duty to make sure that we do not put judges on the bench whose activism and personal ideology would prevent fair and impartial adjudication and would circumvent environmental protections that Congress intended to benefit the American people and generations to come.

An editorial in The Boston Globe recognized: ''When the White House is in the clutches of the oil, coal, mining, and timber companies, as it is now, the best defenders of laws to protect the environment are often federal judges.'' The editorial concludes that if the Senate confirms William Myers, ''the judicial check in this administration's unbalanced policies will be weakened.''

For almost his entire 22-year legal career, Mr. Myers has worked in Washington—in political positions for Republican Administrations and as a lobbyist. He received a partial ''Not Qualified'' rating from the American Bar Association—the ABA's lowest passing grade. He has minimal courtroom experience—having never tried a jury case and having never served as counsel in any criminal litigation. It seems clear that William Myers was nominated not for his fitness to serve as a lifetime member of the federal judiciary but rather as a reward for serving the political aims of the administration.

When Mr. Myers was appointed to his legal post at the Department of the Interior, some described it as putting a fox in charge of the henhouse. Another metaphor that comes to mind is the revolving door that is emblematic of so many of this administration's appointments, especially to sensitive environmental posts. Mr. Myers' Interior appointment was the first ''swoosh'' of the revolving door. His nomination by President Bush to one of the highest courts in the land completes the cycle. Mr. Myers is one of several nominees who have come before us because they are being awarded lifetime appointments to the federal courts based not primarily on their qualifications for the office, but as part of a spoils system for those who are well connected and have served the political aims of the Bush administration.

So many of President Clinton's judicial nominees upon whom the Senate took no action seemed to have been penalized for their government service or for having supported the President. Elena Kagan, James Lyons, Kent Markus and so many others never received hearings, and their nominations were defeated through Republican inaction and obstruction, without explanation. With a Republican President, Senate Republicans have reversed their field and position. We have already confirmed to lifetime appointments a number of Administration and Republican-connected candidates, including Judge Prost, Judge McConnell, Judge Cassell, Judge Shedd, Judge Wooten, Judge Chertoff, Judge Hudson, Judge Clark, and Judge Bybee. At this point in a presidential election year, in accordance with the Thurmond Rule, only consensus nominees being taken up with the approval of the majority and minority leaders and the chairman and ranking members of the Judiciary Committee should be considered. Mr. Myers is no such nominee. In 1996, the last time a President was seeking reelection, the Senate Republican majority refused to confirm any judges to the circuit courts. Not one was considered and confirmed that entire session. In contrast, this year we have already proceeded to confirm five additional circuit judges.

The list of those who are deeply concerned about, and who have felt compelled to oppose this nomination has been long and it continues to lengthen. More than 175 environmental, Native American, labor, civil rights, disability rights, women's rights and other organizations have signed a letter opposing Mr. Myers' confirmation to the Ninth Circuit Court of Appeals. The National Congress of American Indians, a coalition of more than 250 tribal governments, unanimously approved a resolution opposing Mr. Myers' nomination. The National Wildlife Federation, which has never opposed a judicial nomination by any President in its 68-year history, wrote:

> Mr. Myers has so firmly established a public record of open hostility to environmental protections as to undermine any contention that he could bring an impartial perspective to the issues of wildlife and natural resource conservation that come before the court. Indeed, Mr. Myers is distinguished precisely by the ideological rigidity that marks his positions on these issues.

A letter from the California Legislature, signed by the Senate President Pro Tem, the Chair of the Senate Natural Resources Committee, and the Chair of the Senate Environmental Quality Committee, strongly opposing Mr. Myers' nomination, told the Judiciary Committee:

> Mr. Myers' record as Interior Solicitor of favoring the interests of the grazing and mining industries over the rights of Native Americans and the environment, coupled with his long history as an extreme advocate for those industries, cause serious doubts on his willingness or ability to put aside his personal views in performing his official duties.

I have great regard for the Senators from Idaho. I have affection for the former Senator from Wyoming who was my colleague on the Judiciary Committee for many years and who I consider a friend. In deference to them, I have examined Mr. Myers' record and asked myself whether I could support this nomination. Regrettably, I cannot.

If you watch what the Bush administration does, instead of just listening to what it says, there is much evidence of this administration's outright contempt for high environmental standards. This nomination, in itself, says something about that.

I hope that the Senate's vote today will say something about the higher priority that the Senate makes of environmental quality.

I must oppose Mr. Myers' confirmation.

Also, we know under the Thurmond rule he can't even be confirmed without the agreement of the Republican leader, the Democratic leader, the chairman, and myself.

We have come to a time when we can't get our budget done. We can't pass veterans appropriations or homeland security. We can't do these things because we don't have time, and yet we are wasting time on something everyone knows will go nowhere.

I must oppose Mr. Myers' nomination.

I yield 5 minutes to the distinguished Senator from Illinois.

Mr. DURBIN. Before yielding to me, would the Senator yield for a question?

Mr. LEAHY. Of course.

Mr. DURBIN. Would the Senator from Vermont inform me and the Senate the number of nominees of the Bush administration to date who have been approved by the Senate and the number of those who have been disapproved?

Mr. LEAHY. Mr. President, I would note that we have approved, first, 100 in the 17 months that we, the Democrats, were in charge of the Senate.

In the next 21, 22, 23 months, however long it was that the Republicans were in charge, another 98 were confirmed.

I don't think a single one was defeated on the Senate floor. A small number had been held back—I think about one-tenth of what the Republican majority held back during the Clinton Presidency.

Actually, I might say to my friend from Illinois, we have confirmed more than we did during President Reagan's first term when, of course, you had a Republican Senate throughout his term. For that matter, we confirmed

more than President George H.W. Bush.

Mr. DURBIN. If the Senator will further yield, if I am not mistaken, we have approved 198 nominees from the Bush administration, and only 6 have not been approved to date?

Mr. LEAHY. That is right.

Mr. DURBIN. Does that number meet the Senator's recollection?

Mr. LEAHY. Yes, and one highly contentious one went through. He had the most negative votes, of both Democrats and Republicans, of any nominee in history because of the extreme positions he had taken.

I yield 5 minutes.

Mr. DURBIN. Mr. President, I rise in opposition to the nomination of William Myers to the U.S. Court of Appeals for the Ninth Circuit.

William Myers is a successful lawyer and a passionate advocate. If I owned a mining company or a ranch and I needed a lobbyist, Mr. Myers would be the first person I would call. But I have concerns about whether Mr. Myers can walk away from a lifetime of lobbying for these special interests and be fair as a judge on the Nation's second highest court.

His loyalty to the grazing and mining industries and to ranchers has been undivided and passionate. He has advanced their agenda, whether on a private payroll or working for the Government.

For example, in a case from my home state of Illinois, Solid Waste Agency of Northern Cook County v. United States Corps of Engineers, Mr. Myers argued on behalf of the National Cattlemen's Beef Association that Federal regulation of certain land use was beyond the commerce clause power of Congress because that area is traditionally regulated by State and local governments. Mr. Myers' narrow reading of the commerce clause, if followed through, could jeopardize essential health, safety, environmental, and antidiscrimination laws.

In another Supreme Court case, Babbitt v. Sweet Home Chapter of Communities for a Great Oregon, Mr. Myers argued, on behalf of the National Cattlemen again, that:

> . . . the constitutional right of a rancher to put his property to beneficial use is as fundamental as his right to freedom of speech or freedom from unreasonable search and seizure.

He argued that the freedom claimed by a rancher to use his property was equivalent to our freedom of speech under the Constitution. This is an argument that would make any cowboy blush. Mr. Myers should have known better. He should have known that the Supreme Court has held that only a very limited number of rights are so fundamental, such as freedom of speech and the right to privacy. Mr. Myers' celebration of property rights is reminiscent of the Lochner decision, an era of court law when property and economic rights trumped almost all others. All but the most radical thinkers have rejected this ancient, discredited view. Mr. Myers lovingly embraces it.

The Ninth Circuit is a crucial battleground circuit. It hears a great many cases pitting property rights against environmental regulation. I have searched in vain for any evidence—any evidence—that Mr. Myers could rule on such cases with an open mind. I can't find it.

In a 1998 article entitled ''Litigation Happy,'' Mr. Myers expressed concerns about environmental litigation. These are his words:

> Environmentalists are mountain biking to the courthouse as never before, bent on stopping human activity wherever it may promote health, safety and welfare.

End of quote from nominee Myers.

He wrote another article in which he compared the Federal Government's management of public lands to King George's tyrannical rule of the American colonies, and he claimed that public land safeguards are fueling ''a modern-day revolution'' in the West.

Mr. Myers has stated that many environmental laws have ''the unintended consequence of actually harming the environment.''

He has denounced the California Desert Protection Act, a significant environmental law that was passed in 1994, thanks to the leadership of our colleague, Senator DIANNE FEINSTEIN. Mr. Myers calls that particular law ''an example of legislative hubris.'' In his hearing he acknowledged his remark was a ''poor choice of words,'' and we all appreciated his honesty. But as the San Francisco Chronical put it:

> Poor choices of words seem to be the rule, not the exception, in Myers' career.

President Bush rewarded Mr. Myers for his track record of advocacy by appointing him to be the top lawyer at the Department of Interior in 2001. While there, he formulated several important policy changes that favored the industries that he traditionally represented in public life. He issued a controversial legal opinion that prevented the voluntary retirement of Federal grazing permits. These voluntary retirements had enjoyed bipartisan political support, but they were opposed by the grazing industry. He also wrote a legal opinion overturning the policy of the Clinton administration and allowed for mining of the 1,600-acre Glamis open-pit gold mine.

This decision was strongly opposed by the Quechan Indian Nation because the mining violates their sacred lands.

Because of his role in the Glamis project, Mr. Myers' nomination has been opposed by the National Congress of American Indians, the first time this organization of 500 tribes has ever opposed a judicial nominee.

In addition, he has been opposed by virtually every major environmental group, including the National Wildlife Federation, which has never opposed a judicial nominee in its history.

The final concern I have about Mr. Myers is his minimal courtroom experience. He is seeking a spot on the second highest court of the land and comes to this nomination with extremely limited experience in a courtroom. Mr. Myers' exposure to the courtroom has apparently been limited to watching the second half of ''Law and Order.''

He has never handled a case that went before a jury in 23 years of legal practice. He has participated in only three trials and he has no criminal litigation experience whatsoever. His lack of legal experience may explain why Mr. Myers received the ABA's lowest passing grade: ''majority qualified'' and ''minority not qualified.''

I believe President Bush can do better by this circuit. I don't think Mr. Myers should receive a lifetime appointment to the second highest court in the Nation.

The ACTING PRESIDENT pro tempore. The Senator from New York.

Mr. SCHUMER. Mr. President, I ask unanimous consent that I be yielded 5 minutes from the time of the minority.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SCHUMER. Thank you, Mr. President. I thank my colleagues here today.

I rise in strong opposition to the confirmation of William Myers. When the nine Democratic members of the Judiciary Committee unanimously vote against a nominee, you can be sure that there are real questions about the nominee that must be answered. We rarely do it.

Once again to reiterate, 198 judges approved, 6 opposed. Why are we trying to make Mr. Myers the seventh? Is it some lobbying group? Not at all. Is it the fact we just do not agree with his views? Clearly not.

The bottom line is that Mr. Myers is extreme on environmental issues and on land issues. And these issues are important where the Ninth Circuit probably has much more to say than any other circuit in the land, given the vast territory out west that it covers.

Mr. Myers is one sided and extreme. There has been no balance. There has been no attempt to see the other side. There has been no attempt to be judicious in the true sense of the word. That is why so many of us feel constrained to rise against him.

Nominating William Myers is like sticking a thumb in the eye of all Senators who believe extremists, right or left, should not be on the Federal bench.

The bottom line is very simple; that is, Mr. Myers has not shown a single iota of moderation as he has moved through his career. He has not been a judge or somebody who has had judicial experience. But that doesn't bother me. It bothers some. It doesn't bother me.

The problem is Mr. Myers' record screams ''passionate activist.'' It doesn't so much as whisper ''impartial judge.''

Let us go over some of the things my colleague, Mr. DURBIN, mentioned. I

will elaborate on some of those. It is not just that Mr. Myers has spent almost every day of his career as a professional lobbyist advocating for mining and ranching interests to the detriment of environmental concerns. It is how he has done it. There is never an understanding that the other side has any merit.

The bottom line here is what he said: ''Environmentalists are mountain biking''—that was snide—''to the courthouses, never before done, stopping human activity wherever it may promote health, safety, and welfare.''

Human activity that pollutes the air or water? This man comes from such a narrow mindset that it is clear he doesn't belong on the bench.

The cases he was discussing when he said that included suits to halt the discriminatory placement of waste treatment facilities, protection of irrigation canals from toxic chemicals, and to stop logging in protected national forests.

Again, he shows such little tolerance for the other viewpoint that one doesn't have much faith that he can be an impartial judge.

When it comes to the environment, it seems like confirming William Myers would be like putting the fox in charge of the environmental hen house.

If one remark were an isolated incident, you could say, well, one remark shouldn't stop someone from being a judge. But he said the Clean Water Act has the unintended consequence of actually harming the environment. Who in America believes that? Some people—very few—may say it goes too far. But that it harms the environment?

He argues that it is fallacious to believe the central government can promote environmentalists.

Let me tell Mr. Myers something. In New York City where I live my lungs are cleaner because the Federal Government has a Clean Air Act. Maybe he doesn't need one in Idaho, but they sure need one in Los Angeles which is in the Ninth Circuit.

And the intolerance to say that the central government can never promote environmentalism—he has compared the Government's management of public lands to King George's tyrannical rule over the American Colonies.

I guess that kind of selfish freedom—you own the land and you can do whatever you want with it—is Mr. Myers' view. It is not America's view. This man has continued to have that view.

He said that professional environmentalists are primarily interested in fundraising and the selling of magazine subscriptions. Do we want to say the Cattlemen's Association is only interested in making money no matter what happens? What would the Cattlemen's Association or a rancher who is trying to do a good job think of that?

Mr. Myers' comments are hardly reflective of the moderation and temperament we look for from judicial nominees. His lack of understanding and intolerance come across over and over and over again.

When it comes to comments about the environment, Mr. Myers is like the Energizer bunny: He just keeps on going and going.

Earlier this year, the Buffalo News ran an editorial against his nomination, saying in part:

> The Bush administration is showing an Oz-like talent for turning over protect-the-environment posts to former lobbyists who once sought to overturn the rules they are now being charged with keeping.

I couldn't agree more.

This is just another example of the Bush Administration saying one thing and doing another. They say they care more about the environment and then they nominate anti-environmentalists to defend it.

With Mr. Myers' nomination, we are not just through the looking glass; we are all the way down the rabbit hole.

I wish we didn't have rise today and vote no but I think we are compelled to. I urge my colleagues to reject this nomination.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. HATCH. Mr. President, I yield such time as he needs to the distinguished Senator from Idaho.

The ACTING PRESIDENT pro tempore. The Senator from Idaho.

Mr. CRAPO. Thank you very much, Mr. President, I thank the chairman of the Judiciary Committee, Senator HATCH, for yielding me this time.

It is my honor to stand here in strong support of the nomination of William G. Myers to the U.S. Court of Appeals for the Ninth Circuit.

Contrary to the remarks we have just heard, former Solicitor of the Interior, William G. Myers is a highly respected attorney who has had extensive experience in the field of natural resources, public lands, and environmental law. His nomination enjoys widespread support from across the ideological and political spectrum.

Mr. Myers has been nominated to the Ninth Circuit Court of Appeals which covers the States of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington, as well as Guam and the Northern Mariana Islands. He has a distinguished career serving on the issues that are critical to these States.

From July 2001 to October of 2003, Mr. Myers served as Solicitor of the Interior, the chief legal officer and third ranking official of the Department of the Interior. In that capacity, he was supervisor over 300 attorneys in 19 offices across the country and managed a $47 million annual budget, and provided advice and counsel to the Secretary of the Interior, as well as to the Department's offices and bureaus.

He was confirmed by the Senate as Solicitor of the Interior by unanimous consent. At that time, these arguments that are now being brought forward simply were absent from the floor.

The reason is because Mr. Myers' strong service is respected across the political spectrum.

Before coming to the Department of Interior, Mr. Myers practiced at one of the most respectable law firms in the Rocky Mountain region, where he participated in an extensive array of Federal litigation involving public lands and natural resource issues. Some of the attacks on him are attacks made against him because of positions he took on behalf of clients, something which Members across the board in this Senate have said is not the appropriate way to judge whether a person will, as a judge, take a balanced view.

An advocate in the courtroom is different than a judge. One should not be judged in their professional qualifications when they are serving as an advocate, as is being done to Mr. Myers today.

From 1992 to 1993, Mr. Myers served in the Energy Department as the Deputy General Counsel for Programs, where he was the Department's principal legal adviser on matters pertaining to international energy, Government contracting, civilian nuclear programs, power marketing, and intervention and State regulatory proceedings.

He served as Assistant to the Attorney General of the United States from 1989 to 1992. In this capacity, he prepared the Attorney General for his responsibilities as Chairman of the President's Domestic Policy Council.

Before entering the Justice Department, Mr. Myers served over 4 years as legislative counsel for one of our former colleagues, Senator Alan Simpson of Wyoming, where he was Senator's Simpson principal adviser on public lands issues. Mr. Myers is a nationally recognized expert in natural resource law and public lands law. He served as vice chairman of the Public Lands and Land Use Committee of the American Bar Association, the section on environmental and energy and resources. In his home State of Idaho, Mr. Myers chaired Idaho State Board of Land Commissioners, Federal Lands Task Force Working Group, and the Boise Metro Chamber of Commerce State Affairs and Natural Resources Subcommittee.

He is an avid outdoorsman and committed conservationist. For the past 15 years, he served as a volunteer for the National Park Service and over that span has logged at least 180 days of volunteer service in numerous parks, performing trail work, campsite cleaning, visitor assistance, and park patrols.

He has widespread support, as I indicated, from across the political spectrum. Again, contrary to the comments made in the Senate today, Mr. Myers has the balanced demeanor to be an excellent Federal judge.

Former Democratic Idaho Governor Cecil Andrus, who also served as Secretary of the Interior in the Carter administration, supports Mr. Myers. He stated that Mr. Myers possesses ''the necessary personal integrity, judicial temperament and legal experience, as

well as the ability to act fairly on matters of law that will come before him on the court.''

In addition, former Democratic Governor of Wyoming, Mike Sullivan, who also served as a U.S. Ambassador to Ireland under the Clinton administration, endorses Mr. Myers. He calls Mr. Myers a thoughtful, well-grounded attorney who has reflected, by his career achievements, a commitment to excellence, and states that Mr. Myers would provide serious responsible and intellectual consideration to each matter before him as an appellate judge and would not be prone to extreme or ideological positions unattached to legal precedence or the merits of a given matter.

Mr. Myers is backed by every member of the Idaho congressional delegation and 15 State attorneys general, including three Democratic attorneys general—Ken Salazar from Colorado, Drew Edmondson from Oklahoma, and Patrick Crank from Wyoming—who strongly support Mr. Myers. These chief law enforcement officers from their States say Mr. Myers would bring to the Ninth Circuit strong intellectual skills combined with a strong sense of civility, decency, and respect for all.

Two former Attorneys General of the United States support Mr. Myers, one Republican and one Democrat. Former Attorney General William P. Barr states that Mr. Myers represents the epitome of judicial temperament and would do a great job, while former Attorney General Dick Thornburgh calls Mr. Myers exceptionally well-qualified to serve as a member of the Federal judiciary.

There have been some attacks made against Mr. Myers today to which I will briefly respond. As I said earlier, many of the attacks made against him are for positions he took advocating on behalf of clients or on behalf of an employer when he was working in the Department of the Interior or in other capacities.

Some groups claim that Mr. Myers did not adequately protect the environment as the Solicitor of the Interior. The record simply belies this argument. As Solicitor of the Interior, Mr. Myers vigorously fought to safeguard the environment and conserve natural resources. Mr. Myers sought to protect this country's lands and national parks and monuments. The list I have in front of me is extensive, listing actions he has taken as the Solicitor of the Department of the Interior to preserve and protect the incredible environmental resources which we have in this Nation.

He is also recognized for protecting indigenous animals as well as the environment and supported an agreement removing dams from the Penobscot River, in what conservationists called the biggest restoration project north of the Everglades. His involvement in working on wolf issues and on issues regarding nesting sites of endangered birds to protect them from harassment of bird watchers has been significantly noted. He has a very proconservationist leaning.

Mr. Myers fought to protect our Nation's waters and to ensure the Nation was adequately compensated for the private use of natural resources. Again, he has been attacked in the Senate today for his defense of private property rights by those who do not want to see a balance brought back to the Ninth Circuit Court of Appeals. Mr. Myers has defended reasonable interpretations of the Outercontinental Water Royalty Relief Act to ensure that oil and gas companies did not enjoy unjustified windfalls through royalty-free activity and supported record royalty recoupment against Shell Oil Company regarding natural gas in the Gulf of Mexico.

This shows when there are actions taken by those who would harm the environment, he is prepared and ready to step forward. Yes, he does protect private property rights. He has a belief that private property protection means something in this country. He recognizes the value of private property in our Constitution and in our system of government in America. For that, he is being criticized in the Senate today.

We should be glad to have a nominee to the Ninth Circuit Court of Appeals who will help us bring some sense of balance back to that court. Our colleague from New York, Senator SCHUMER, who just debated, stated last year on the nomination of Jay Bybee that the Ninth Circuit is by far the most liberal of any court in our country. Most of the nominees are Democrats and from Democratic Presidents. It is the Ninth Circuit that gave us the Pledge of Allegiance case, which is way out of the mainstream on the left side. Mr. Myers would bring some conservative balance back to that Ninth Circuit court, it is true. Frankly, I personally believe one of the reasons he is being so strongly objected to in the Senate today is because there are many who do not want to see that balance brought back to the Ninth Circuit Court of Appeals.

Finally, I conclude by discussing a little bit more the qualifications of Bill Myers. I know him personally. As has been stated, he is from Idaho. He has shown throughout his legal career that he can be a fierce, strong, eloquent advocate for those who were his clients and for those who were his employers. His effectiveness in advocating on behalf of his clients and his employers is now being utilized against him. If that were done to other nominees, as it has been done to some nominees, very few who were eloquent, strong advocates as attorneys or who were strong public servants serving as attorneys in the public service of our country would be able to pass through this Senate. We could find quotations in their briefs, quotations in their statements and in their advocacy which we could use in an isolated way to say they were taking too strong a stand.

The reality is, those who know him—Idaho Democratic Governor Cecil Andrus, Wyoming Democratic Governor, the Democratic Attorneys General who have worked with him—have given the true picture of Bill Myers. He is a man who with passion fights for that in which he believes but who has the ability, the skill, and the demeanor as a judge to stand in judgment with balanced reference to the precedent that comes before him. He would be an outstanding addition to the Ninth Circuit Court of Appeals. I encourage all Members in the Senate to vote to give him a chance to have his nomination considered.

In conclusion, let's remember what the vote is that we are having today. The vote we are having today is not on the nomination of Mr. Myers; it is on the effort to get cloture on the filibuster of his nomination.

We are voting today to answer the question of whether he is entitled to a vote on his nomination—something that, until this Congress, has always been allowed on someone who was put out of the Judiciary Committee and brought to the floor of the Senate. Never, before this Congress, has a nominee sent from the Judiciary Committee to the floor of the Senate been denied a vote on their nomination. Yet today we see, for the seventh time in this Congress, an honorable person who is nominated, and has made it all the way to the floor of this Senate, being threatened with the denial of even a vote on their nomination.

I encourage all of my colleagues to afford Mr. Myers the kind of opportunity that all persons before him—until this Congress—have been allowed to have; and that is, a vote on his nomination to the Ninth Circuit Court of Appeals.

Mr. President, I yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent that the distinguished Senator from Wyoming be granted up to 5 minutes, and immediately following him, the distinguished Senator from Idaho be granted up to 5 minutes of our time.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Wyoming is recognized for up to 5 minutes.

Mr. THOMAS. Mr. President, I thank the chairman.

I come to the floor to speak on behalf of Bill Myers because of his activity in Wyoming and his work in Washington, working with a former Senator from Wyoming. But after hearing what was said on the other side of the aisle, I am particularly inclined to share a little bit about Bill Myers and the fact that he would bring some balance to the Ninth Circuit.

Fortunately, Wyoming is not in the Ninth Circuit, but I am concerned there would be someone there who has

dealt with public lands issues, who has dealt with the kinds of issues we deal with in the West, and who has done so very successfully.

So I support Bill Myers' nomination to the Ninth Circuit Court of Appeals. He has had a distinguished career in public service and as a practicing attorney, as well as being Solicitor of the Interior Department. He was confirmed by the Senate unanimously to that job as Solicitor, which is a very difficult task, of course.

He is nationally recognized as an expert on natural resources and the use of natural resources and issues that are of particular importance to the West and the Ninth Circuit area. So I am not going to continue with his credentials. Our friends from Idaho know more about that than I, and they have talked about his qualifications.

But, unfortunately, western issues disqualify him for Idaho's only seat on the Ninth Circuit Court. That is a shame because there is nothing more important overall than natural resource kinds of issues. So I guess the court will not have a person with that kind of experience, but, rather, this floor will keep the citizens of Idaho from having someone there to represent them in those areas that are so important. I certainly feel badly about that kind of position.

There has been discussion that he is not supported by any Democrats. That is not the case. I have a statement from the Honorable Michael Sullivan, former Democratic Governor of Wyoming:

> Mr. Myers has a wealth of legal experience in the private practice, in Washington, and in the areas of public lands and the environment. Those are areas of extreme importance to the country and those of us in the West, and it is my view that Bill's experience would serve the Court and the Circuit well. . . . He is, in my view, an individual who would provide serious, responsible, and intellectual consideration to each matter before him as an appellate judge and would not be prone to extreme or ideological positions unattached to legal precedent or the merits of a given matter.

So I rise to say we have observed the activities of Bill Myers in the West. Certainly, from all the activities he has been involved in, he has done so well. It is my belief he should go on to this court. But, more importantly, in terms of process, he certainly ought to have an opportunity to have a vote on the floor of the Senate. So I urge that be the case this afternoon.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Idaho.

Mr. CRAIG. Mr. President, I thank my colleague from Wyoming for visiting with us about Bill Myers and his qualifications.

I was on the Senate floor yesterday and made my full statement on behalf of Bill Myers. I spoke this morning in opening remarks, but I did want to make a few additional comments before the chairman of the committee, once again, revisits the nomination of Bill Myers.

On the Senate floor this morning, I said I believed there was a selective, concerted effort on the part of our colleagues on the other side of the aisle to pick nominees and block a vote against them for the purpose of the filibuster and ultimately knowing they can kill these nominees because we cannot get to the 60-vote requirement or threshold they have provided us.

I made that statement this morning. I was told, very frankly, by a member of the Judiciary Committee on the other side, that when Mr. Myers was voted out, he would not be confirmed. Why? Because they were going to use him to demonstrate before their environmental constituencies that he was their token, and they would bring him down.

Bill Myers does not deserve that kind of treatment for a variety of reasons. My colleague from Idaho has expressed them very clearly, as have I, that in his private life he was a good attorney and an advocate for his clients.

But here is what Bill Myers said in the committee hearing that I chaired in his behalf when we were considering his nomination. He said:

> [W]hen a person takes on those robes—

Meaning the robes of a judge of the Ninth Circuit—

> takes the oath of office, swears to uphold the Constitution, that means they will follow the law and the facts, wherever the law and the facts take them, without regard to personal opinion, public opinion, friends or foes.

To me, that sounds like a gentleman of judicial temperament who understands the appropriate role of a judge, as some who have come to the floor who are Senators, and were attorneys in other lives, also understand the appropriate role of an advocate, an attorney for a client. Yet Mr. Myers is criticized today because he was a good attorney for a client. It was because he was a good attorney that the President of the United States said: This man will make a good judge in the Ninth Circuit. And now he is criticized for it.

The minority leader, after I had spoken this morning, said: Well, Senator CRAIG voted to not allow cloture on a judge of the Ninth Circuit before. I did. I did exactly what the minority leader said I had done. And the man's name was Richard Paez. That was in 2000. He was a nominee for the Ninth Circuit by President Clinton. I voted against cloture, and I lost. And why I lost is that it was not an organized ''party'' effort of the kind we now see demonstrated on the floor of the Senate today, that has openly and directly refused the right of seven people to have a vote on the floor.

I voted against Mr. Paez because I am a constituent of the Ninth Circuit, and I thought he would be a liberal, activist judge. I did something else. I voted to delay indefinitely a vote on Richard Paez. I lost. Why did I lose? Because it was not an organized ''party'' effort on this side of the aisle, as is the vote we will see at 2:15 this afternoon. I voted against confirming Richard Paez and I lost.

But the point here is clear: Richard Paez got his vote on the floor of the Senate. He was not denied a vote, as now the Democrat leader and his colleagues have decided to deny Bill Myers a vote. That is a fact. And the minority leader needs to know it. He needs to know that Richard Paez was not organized against. Up-or-down votes: I lost; Richard Paez won.

Now, I was not wrong in my vote. Richard Paez has now been on the Ninth Circuit bench for at least 3 years. He is an activist, liberal judge. And I was right about reviewing him.

He still got his vote. He still got his judgeship because a majority of the Senate said Richard Paez should serve in our advise and consent role under the Constitution. We advised the President of the United States on behalf of his nominee and he was confirmed.

I will talk about one other item I think is important. We are all entitled to our own opinions, but not to our own facts. We can all look at facts differently. I want to talk for a few moments about ABA ratings. I remember the American Bar Association ratings of nominees used to be called the ''gold standard.'' If you didn't get a top rating, my goodness, you were not, nor should be, considered. Let me talk about those briefly.

The other side was saying Mr. Myers doesn't have the right rating. Well, they also riled and railed against Miguel Estrada and Priscilla Owen and, by the way, they had top ABA ratings. Have they already forgotten the very principles they applied to somebody else? You cannot reverse them in a 48-hour period and apply them in a different way to somebody else. I am sorry, you can be entitled to your own opinions, but you ought not to be entitled to your own facts.

As we each consider the weight of ABA ratings and what they should carry, let me remind this body that Mr. Myers' rating places him among an impressive group of individuals. Among the names of those who received similar ABA ratings, we find judicial nominees like Judge Richard Posner, arguably one of this generation's most prolific and impressive court of appeals judges, who was described by Supreme Court Justice William Brennan as one of the two geniuses he had ever met. Well, Bill Myers is in that category. Not bad. Other nominees included Judge Frank Easterbrook, Stephen Williams, James Buckley, Jerry Smith, and Laurence Silberman. No one familiar with their impressive experience, credentials, and legal acumen can honestly question these judges' fitness for the Federal bench. Yet Mr. Myers' ratings and theirs are the same.

Isn't it interesting how it can be so arbitrary and one can choose and pick based on one's opinions? I cannot criticize my colleagues on the other side. They are entitled to their own opinions. But they are not entitled to their own facts.

Finally, let me remind you that during the Clinton administration this

committee voted out and the Senate confirmed 3 circuit court and 15 district court nominees who had ABA ratings identical to Mr. Myers' ''majority qualified; minority not qualified'' ratings. In August, September, and October of 1994, this committee even voted out three district court nominees who had ''majority not qualified'' ABA ratings, and all three judges were confirmed. These nominees include Roger Gregory, confirmed on a 93–1 vote, who now serves in the Fourth Circuit; Julio Fuentes, confirmed by a 93–0 vote. The reason that happened is because, at that time in the history of the Senate, we recognized the importance of the debate and we also recognized an up-or-down vote. What we did not see was a concerted party effort on selectively picked nominees for political purposes and denying them their right to a vote on the floor of the Senate.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, how much time remains?

The ACTING PRESIDENT pro tempore. There is 8 minutes 15 seconds.

Mr. HATCH. Mr. President, I want to briefly make a point in rebuttal to the statement by the Senator from South Dakota, Mr. DASCHLE, this morning.

The minority leader seems to be trying to justify his obstruction of an up or down vote on Bill Myers by pointing to some in our caucus who voted against cloture on two very liberal Ninth Circuit judges whom the Senate confirmed without a filibuster in election year 2000. Just stating the facts makes it clear that there is no justification for the Democrats' obstruction. But let me also point out. Unlike their leadership, Republican leadership made sure that those two liberal nominees, now committed leftist activists on the Ninth Circuit, were not filibustered. They got up or down votes because the vast majority of us thought that filibusters of judicial nominees were completely out of order in the U.S. Senate.

These liberal activist judges, now issuing their often-reversed edicts from San Francisco, received up or down votes in this Senate in an election year. Bill Myers deserves no less.

I think it's important to get on record exactly what's happened here with Bill Myers' nomination. We originally asked for 5 or 6 hours of debate; Democrats objected. We settled on 4 hours of debate, equally divided, during yesterday's session, and not a single Democrat came to the Senate Floor to debate. It is puzzling to me why those who oppose him so vehemently did not come to the floor, stand up and defend their objections. It seems to me that if Senators can't defend their objections to a nominee, they certainly shouldn't object to an up or down vote. I appreciate that today we have at least heard some of their arguments, though I think they are not reflective of this qualified nominee nor his outstanding record.

So I want to return to what this debate is about, or at least what it should be about. While this nomination has been hijacked by another unparalleled filibuster—the seventh nominee to be subjected to this unprecedented form of obstruction—it should have been about the qualifications of Bill Myers to be a Ninth Circuit judge. And in that respect, let me remind my colleagues, that Bill Myers' nomination to the Ninth Circuit Court of Appeals is supported by a wide, bipartisan range of individuals and organizations, particularly those who value expertise in Western land use issues.

Let me provide just a few examples from several support letters received by the Judiciary Committee:

The Farm Bureau Federations of California, Oregon, Idaho and Montana, the Oregon Cattlemen's Association, the Oregon Forest Industries Council, the Oregon Wheat Growers League, the Oregon Women for Agriculture, and eight additional county farm and stock grower bureaus in Oregon, among others, wrote on February 18, 2004:

> Mr. Myers' background and legal career provide enormous experience that could only serve to benefit the citizens of the [Western United States]. His professional history shows clear leadership skills in resolving many complex issues. It is clear that Mr. Myers has an ability to analyze problems and make rational decisions that conserve our national heritage while at the same time move us forward in a responsible manner. Time and again he has shown a capacity to set aside the rhetoric and to objectively evaluate the respective interests of the parties involved. . . . Our organization and membership has found, whether through first hand experience or simply as interested observers, that Mr. Myers conducts himself with integrity, competence, professionalism and an unprecedented respect for the law.

The Tulalip Tribes of Washington State wrote on March 9, 2004:

> The Tulalip Tribes [write] to support the nomination of [Bill Myers]. . . . We find that he has a balanced record [of defending] the interest of Native Americans. The [Ninth Circuit] is in need of an appointment by an individual experienced and knowledgeable in Federal Indian Law.

And the Attorney Generals of South Dakota, North Dakota, Delaware, Hawaii, Nevada, Alaska, Colorado, Idaho, Ohio, Oklahoma, Wyoming, Pennsylvania, Virginia, Utah, and Guam wrote on January 30, 2004:

> As Attorneys General, we observed that Mr. Myers, while dutifully representing his client, the federal government, always maintained an objectivity and practical understanding of the conflicting demands relating to those interests. In our view, his thorough understanding of relevant legal precedents, decisions and key policy interests and his outstanding legal reasoning as Solicitor demonstrate his keen intellect, sound judgment and the skills suitable to the bench. . . . [W]e appear before the Circuit Courts of Appeal with considerable frequency. Clearly, we value judges who display a temperament that is even-handed, respectful and thoughtful—the temperament displayed by Mr. Myers. Mr. Myers would bring to the Ninth Circuit strong intellectual skills, combined with a strong sense of civility, decency and respect for all.

Now, while such endorsements from these types of people—farming and ranching organizations, Indian tribes who do not have ideological axes to grind with the Department of the Interior, and 15 state Attorneys General—may not matter much to Senate Democrats, they do to me, and to most Westerners.

They matter to Senators CRAIG and CRAPO, whose state will effectively lose its representation on the Ninth Circuit by means of a stealth filibuster. This is grossly irresponsible and unworthy of the U.S. Senate. They matter to a majority of Senators who stand ready to vote and confirm Bill Myers to a Ninth Circuit that so badly needs qualified, non-activist judges who respect the law and the Constitution.

Let me just talk about the process here of confirming judges. We have confirmed 198 judges so far, which I might add, is fewer than President Clinton's first term. Yet some of my colleagues think that the constitutional duty to advise and consent has a time clock attached to it and that the time has run out for the Senate to do its duty. I reject this analysis, either that the previous agreement to allow the vote on the 25 judges was the sum total of our work in the Senate; or the notion that judicial nominations cannot be confirmed after some mythical deadline is announced.

There are plenty of examples of confirmations of judges in Presidential election years during the fall, some which occurred after the election was held. Stephen Breyer, confirmed to the First Circuit Court of Appeals, is just one example. I know, I was one who helped bring that about. Under the Senate Democrats theory, the remaining 25 judges pending before the Senate should be dismissed out of hand. This is not logical, nor is it the proper approach to take under the Constitution.

So it appears that the Democrats' newest tool of obstruction takes the form of a stealth filibuster. Sure, we object, my colleagues say, but we are not going to bother to explain to the American people why. To the Senator whose States are in the Ninth Circuit—Senators CRAIG and CRAPO, Senator SMITH, Senator ENSIGN, Senators STEVENS and MURKOWSKI, Senators KYL and MCCAIN, Senator BURNS—guess what? You are told by Senate Democrats that they are not going to allow you to vote on this nominee, that you need for the Ninth Circuit, and that the position papers of the extreme environmental groups that have distorted the record of and attacked Bill Myers for over a year should adequately explain their opposition and basis for refusing a vote.

Yesterday, I said that Senators should ask themselves, Is this vote on Bill Myers really about Bill Myers? It is clear that this cloture vote, this denial of an up-or-down vote, is not about Bill Myers. It is, in fact, nothing more

than a reflection of special interest group disdain for policies favored by farmers, ranchers, miners, the Bush Interior Department, or anyone else who advocates balanced uses of Federal lands. It is, as Senator SESSIONS put it so well yesterday afternoon, a demonstration of the conceit of the elite, that Senate Democrats refuse to allow an up-or-down vote.

Bill Myers has been nominated to the Ninth Circuit, but I want to emphasize that the impact of this vote—or the Democrat minority's obstruction of an up-or-down vote—will be felt not only in the States within the Ninth Circuit, but throughout the West, as Senator ENZI so eloquently emphasized yesterday afternoon.

And it is, quite simply, a slap in the face to those farmers, ranchers, miners, and others who make their livings off of the public and private lands of our Western States to say that because a nominee has represented their interests, he does not even deserve a fair vote in the Senate. And, almost silently now, he is filibustered because he is too extreme to sit on a Ninth Circuit with a demonstrated record of leftist judicial activism.

Such a position is untenable, objectively, and I predict it will play even more poorly in the West. Let me read a recent letter to the editor, which was sent by a representative of South Dakota farmers and ranchers to that State's largest newspapers:

RAPID CITY JOURNAL AND
ARGUS LEADER,
*Belle Fourche, SD, July 9, 2004.*

SUPPORT NOMINATION

Agriculture producers in South Dakota and throughout our great country need elected representatives who understand our needs and respond to them. An important issue is currently before the U.S. Senate and Sen[ator] Daschle, the nomination of Bill Myers to serve on the Ninth Circuit Court of Appeals. We urge Sen[ator] Daschle to support the interests of South Dakota agriculture producers by allowing an up or down vote on the merits of the nomination on the floor of the Senate.

The Ninth Circuit issues many important decisions on resource use and environmental matters. Much of the opposition to Mr. Myers has been by environmentalists who have not liked his representation of people who make their living from the land in the West, including ranching interests in particular.

South Dakota producers would be well-served by having someone with direct knowledge of their concerns sitting on the Ninth Circuit, helping to set environmental legal policy for the entire country.

We hope Sen[ator] Daschle will hear our call and allow the Myers nomination to come to a full vote in the Senate. We are constantly reminded how powerful the minority leader position is. Bill Myers deserves a vote by the full Senate.

CHANCE DAVIS,
*President, South Dakota*
*Public Lands Council.*

Indeed, I do hope that Senate Democrats hear this call. I hope they listened to Senators CRAIG, SESSIONS and ENZI yesterday, when they were too busy to even engage in a reasoned debate about why they insist on obstructing a qualified nominee.

In closing, the Senate should show the Constitution some respect by voting up or down on Bill Myers' nomination. I urge my colleagues to reject the filibuster of judicial nominations now and in the future, reject the smears of the extremist special interest groups who have poisoned this process. I urge my colleagues to support the cloture motion and allow the Senate to do its duty and vote up or down on the nomination.

Mr. President, I see Senator BIDEN is in the Chamber. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Delaware.

Mr. BIDEN. Mr. President, I understand I have roughly 8 minutes; is that correct?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. BIDEN. Mr. President, I ask unanimous consent that I be granted 2 additional minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BIDEN. I thank the Chair.

RESPONDING TO THE CRISIS IN DARFUR

Mr. BIDEN. Mr. President, Senator DEWINE and I have introduced a bill to address the atrocities and human rights abuses inflicted by the Government of Sudan upon its citizens living in the western region of Darfur.

By now you are aware of the terrible violence being perpetrated against civilians by the Government of Sudan and its allied militias in Darfur, Sudan. As many as 30,000 black Africans have been killed. Rape has routinely been used as a weapon of war by the Sudanese Government's janjaweed militia proxies. The Government of Sudan has obstructed the delivery of humanitarian assistance—as a result, over 300,000 people are expected to die of disease and malnutrution. Entire villages have been razed to the ground. Crimes against humanity have and are taking place with frightening regularity. Any reasonable person would agree that at the very least, we are witnessing ethnic cleansing. However, I believe that what we are actually seeing is genocide, and that the burden of proof should be on those who deny that such is the case.

Secretary of State Powell visited Darfur at the end of June. I applaud him for going. His visit as well as that of United Nations Secretary General Kofi Annan served to shine a much needed international spotlight on Khartoum's brutal actions.

However, I am disappointed in the actions taken by the administration in the wake of the Secretary's visit.

The administration is circulating a draft United Nations Security Council resolution which puts sanctions on the janjaweed. I do not think pursuing a resolution which would impose an arms and travel embargo on the janjaweed will improve the security situation in Darfur. I am sure there must be a strategy behind this resolution, but on its face, it is hard to see. The janjaweed is not a state actor. It is not even an independent actor. It certainly is not accepting arms shipments from foreign governments. The janjaweed is armed and supplied by the Government of Sudan. And last I heard the only place the janjaweed has traveled is across the border into Chad to further harass its victims. I was not aware that militia members applied for visas to do so. So I would like to know what exactly the thought process behind pursuing such sanctions is.

I would also like to know just why the administration does not believe the Genocide Convention has been triggered. Article II of the Convention defines genocide as any of the following acts committed with the intent to destroy, in whole or substantial part, a national ethnic, racial or religious group: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; or forcibly transferring children of the group to another group.

Let's consider what we know to be the case in Darfur and compare it to the criteria set out in the Convention.

Is there an intent to destroy a national ethnic racial or religious group? A U.N. interagency fact finding team found in April that while villages populated by black Africans were destroyed, villages in the same area populated by Arabs were undisturbed. In some cases the villages that were left undisturbed were less than 500 meters away from those that were bombed and burned to the ground, its residents murdered, raped or tortured, its wells poisoned, its food stores and crops destroyed. This seems to me to be a pretty profound indicator that black Africans are being deliberately targeted. The scorched earth policy of the janjaweed makes it virtually impossible for those who live through the attacks to survive. One can reasonably assume that they were not meant to.

We know that the Government of Sudan, through it janjaweed proxies, has murdered an unknown number of people—perhaps 30,000—because of their ethnicity.

We also know that the militia has caused serious bodily and mental harm to black Africans in Darfur. According to the Convention only one or the other is necessary to qualify as genocide, but the janjaweed and the Sudanese military have done both. As a recent Washington Post article points out, the text of which I ask unanimous consent be printed in the RECORD, the janjaweed have engaged in widespread systematic rape in an effort to populate Darfur with Arab babies.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, June 30, 2004]

'WE WANT TO MAKE A LIGHT BABY'; ARAB MILITIAMEN IN SUDAN SAID TO USE RAPE AS WEAPON OF ETHNIC CLEANSING

(By Emily Wax)

GENEINA, SUDAN, June 29.—At first light on Sunday, three young women walked into a scrubby field just outside their refugee camp in West Darfur. They had gone out to collect straw for their family's donkeys. They recalled thinking that the Arab militiamen who were attacking African tribes at night would still be asleep. But six men grabbed them, yelling Arabic slurs such as ''zurga'' and ''abid,'' meaning ''black'' and ''slave.'' Then the men raped them, beat them and left them on the ground, they said.

''They grabbed my donkey and my straw and said, 'Black girl, you are too dark. You are like a dog. We want to make a light baby,' '' said Sawela Suliman, 22, showing slashes from where a whip had struck, her thighs as her father held up a police and health report with details of the attack. ''They said, 'You get out of this area and leave the child when it's made.' ''

Suliman's father, a tall, proud man dressed in a flowing white robe, cried as she described the rape. It was not an isolated incident, according to human rights officials and aid workers in this region of western Sudan, where 1.2 million Africans have been driven from their lands by government-backed Arab militias, tribal fighters known as Janjaweed.

Interviews with two dozen women at camps, schools and health centers in two provincial capitals in Darfur yielded consistent reports that the Janjaweed were carrying out waves of attacks targeting African women. The victims and others said the rapes seemed to be a systematic campaign to humiliate the women, their husbands and fathers, and to weaken tribal ethnic lines. In Sudan, as in many Arab cultures, a child's ethnicity is attached to the ethnicity of the father.

''The pattern is so clear because they are doing it in such a massive way and always saying the same thing,'' said an international aid worker who is involved in health care. She and other international aid officials spoke on condition of anonymity, saying they feared reprisals or delays of permits that might hamper their operations.

She showed a list of victims from Rokero, a town outside of Jebel Marra in central Darfur where 400 women said they were raped by the Janjaweed. ''It's systematic,'' the aid worker said. ''Everyone knows how the father carries the lineage in the culture. They want more Arab babies to take the land. The scary thing is that I don't think we realize the extent of how widespread this is yet.''

Another international aid worker, a high-ranking official, said: ''These rapes are built on tribal tensions and orchestrated to create a dynamic where the African tribal groups are destroyed. It's hard to believe that they tell them they want to make Arab babies, but it's true. It's systematic, and these cases are what made me believe that it is part of ethnic cleansing and that they are doing it in a massive way.''

Secretary of State Colin L. Powell flew to the capital, Khartoum, on Tuesday to pressure the government to take steps to ease the humanitarian crisis in Darfur. U.S. officials said Powell may threaten to seek action by the United Nations if the Sudanese government blocks aid and continues supporting the Janjaweed. U.N. Secretary General Kofi Annan is due to arrive on Khartoum this week.

The crisis in Darfur is a result of long-simmering ethnic tensions between nomadic cattle and camel herders, who view themselves as Arabs, and the more sedentary farmers, who see their ancestry as African. In February 2003, activists from three of Darfur's African tribes started a rebellion against the government, which is dominated by an Arab elite.

Riding on horseback and camel, the Janjaweed, many of them teenagers or young adults, burned villages, stole and destroyed grain supplies and animals and raped women, according to refugees and U.N. and human rights investigators. The government used helicopter gunships and aging Russian planes to bomb the area, the U.N. and human rights representatives said. The U.S. government has said it is investigating the killings of an estimated 30,000 people in Darfur and the displacement of the more than 1 million people from their tribal lands to determine whether the violence should be classified as genocide.

The New York-based organization Human Rights Watch said in a June 22 report that it investigated ''the use of rape by both Janjaweed and Sudanese soldiers against women from the three African ethnic groups targeted in the 'ethnic cleansing' campaign in Darfur.'' It added, ''The rapes are often accompanied by dehumanizing epithets, stressing the ethnic nature of the joint government-Janjaweed campaign. The rapists use the terms 'slaves' and 'black slaves' to refer to the women, who are mostly from the Fur, Masalit and Zaghawa ethnic groups.''

Despite a stigma among tribal groups in Sudan against talking about rape, Darfur elders have been allowing and even encouraging their daughters to speak out because of the frequency of the attacks. The women consented to be named in this article.

In El Fasher, the capital of North Darfur, about 200 miles east of Geneina, Aisha Arzak Mohammad Adam, 22, described a rape by militiamen. ''They said, 'Dog, you have sex with me,' '' she said. Adam, who was receiving medical treatment at the Abu Shouk camp, said through a female interpreter that she was raped 10 days ago and has been suffering from stomach cramps and bleeding. ''They said, 'The government gave me permission to rape you. This is not your land anymore, abid, go.' ''

Nearby, Ramadan Adam Ali, 18, a frail woman, was being examined at the health clinic. She was pregnant from a rape she said took place four months ago. She is a member of the Fur tribe and has African features.

''The man said, 'Give me your money, slave,''' she said, starting to cry. ''Then I must tell you very frankly, he raped me. He had a gun to my head. He called me dirty abid. He said I was very ugly because my skin is so dark. What will I do now?''

In Tawilah, a village southeast of El Fasher, women and children are living in a musty school building. They said it was too dangerous to leave and plant food.

Fatima Aisha Mohammad, once a schoolteacher, stood in a dank classroom describing what happened to her three weeks ago, when she left the school to collect firewood.

''Very frankly, they selected us ladies and had what they wanted with us, like you would a wife,'' said Mohammad, 46, who has five children. ''I am humiliated. Always they said, 'You are nothing. You are abid. You are too black.' It was disgusting.''

During a recent visit, government minders warned people at the school to stop talking about the rapes or face beatings or death. Minders also were seen handing out bribes to keep women from speaking to foreign visitors. But those at the school spoke anyway. A group of people handed a journalist two letters in Arabic that listed 40 names of rape victims, and wanted the list to be sent to Sen. Sam Brownback of Kansas and Rep. Frank R. Wolf of Virginia, Republicans who were touring the region and pressing the government to disarm the Janjaweed.

''I was sad. I am now very angry. Now they are trying to silence us. And they can't,'' Mohammad said. ''What will people think of all of us out here? That we did this to ourselves? People will know the truth about what is happening in Darfur.''

Later that day in Tawilah's town center, Kalutum Kharm, a midwife, gathered a crowd under a tree to talk about the rapes. Everyone was concerned about the children who would be born as a result.

''What will happen? We don't know how to deal with this,'' Kharm lamented. ''We are Muslims. Islam says to love children no matter what. The real problem is we need security. We don't trust the government. We need this raping to stop.''

Aid workers and refugees in Geneina said that despite an announcement last week by Sudan's president, Lt. Gen. Omar Hassan Bashir, that the Janjaweed would be disarmed, security had not improved. Janjaweed dressed in military uniforms and clutching satellite phones roamed the markets and the fields, guns slung over their shoulders. Last week, the Janjaweed staged a jailbreak and freed 13 people, aid workers said. They also killed a watermelon salesman and his brother because they did not like their prices, family members of the men said.

A government official, speaking with a reporter, described the rapes as an inevitable part of war and dismissed accusations by human rights organizations that the attacks were ethnically based.

In Geneina, two women told their stories while sitting in front of their makeshift straw shelter. One of the women, a thin 19–year-old with dead eyes, moved forward.

''I am feeling so shy but I wanted to tell you, I was raped too that day,'' whispered Aisha Adam, the tears rushing out of her eyes as she covered her face with her head scarf. ''They left me without my clothing by the dry riverbed. I had to walk back naked. They said, 'You slave. This is not your area. I will make an Arab baby who can have this land.' I am hurting now so much, because no one will marry me if they find out.''

Sitting on mats outside the shelter, Sawela Suliman's father talked with village elders about what to do if his daughter became pregnant.

''If the color is like the mother, fine,'' he said as a crowd gathered to listen. ''If it is like the father, then we will have problems. People will think the child is an Arab.''

Then his daughter looked up.

''I will love the child,'' she said, as other women in the crowd agreed. ''But I will always hate the father.''

Then the rains came. They pounded onto the family's frail shelter, turning their roof into a soggy and dripping clump of straw. Suliman started to shiver as the weather shifted from steaming hot to a breezy rain. She will no longer leave the area of her hut to collect straw. She will stay here, hiding as if in prison, she said, and praying that she is not pregnant.

Mr. BIDEN. Mr. President, in the article, which appeared on the front page of the Post on Wednesday, June 30, a woman tells of how she and other women were gang raped by six janjaweed militia men as they went out to gather fuel for fire. ''They grabbed my donkey and my straw and said 'Black girl, you are too dark. You are like a dog. We want to make a light baby. . . .' '' They said ''You get out of this area and leave the child when it's made.'' If that isn't inflicting mental and bodily harm on a group, what is?

We know for a fact that the Government of Sudan has prevented the delivery of humanitarian aid such that, as I

mentioned before, over 300,000 people—black Africans—will probably die. I would say that qualifies as deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

I can not speak to the final two elements. I have not yet heard that the Government or janjaweed have imposed measures intended to prevent births within the group or forcibly transferred children of the group to another group. However, the Convention does not require that all five acts be committed. Any one of the acts qualify as genocide.

Let me make one thing perfectly clear. I completely agree with the Secretary Powell that we must urgently meet the needs of the people of Darfur regardless of whether what is happening is genocide. And the Genocide Convention makes clear that we are to prevent, suppress and punish the crime. So whether one believes what is happening is actual or potential genocide, we are obligated to act.

However, I also believe it is imperative that we acknowledge what is going on. Failure to call the crime what it is and respond fosters a sense of impunity, and emboldens the bad actors in other parts of the world to carry out these sorts of atrocities. I do not believe that the argument I and others are making about whether or not what is going on is genocide is academic, or misses the point about the necessity of helping those suffering in Sudan.

U.N. Secretary General Kofi Annan visited Darfur at the end of June as well. The United Nations and the Government of Sudan issued a joint communique in which the Government agreed to allow unfettered access of assistance and to disarm the janjaweed. The bill Senator DEWINE and I have introduced puts pressure on Khartoum to make good on the promises it has made.

The bill requires the President to certify 30 days from its enactment and every 90 days thereafter whether or not the Government of Sudan has made credible, sincere and genuine efforts to demobilize and disarm the janjaweed, and allowed truly free access to Darfur, without using red tape as a way to prevent aid delivery.

The Government is subject to three different types of sanctions 120 days after the bill becomes law unless that certification is made. First, senior members of the military and Government in Khartoum as well as their families will have any U.S. held assets frozen, and be denied entry into the United States. Second, prohibitions on assistance in this year's appropriations bill will remain in place beyond the end of the fiscal year.

Finally, unless the President issues this certification, the sanctions that are part of the original Sudan Peace Act are triggered: Our representatives to the multilateral development banks are directed to use their voice and vote to oppose any loans to Sudan. The President is asked to consider downgrading our diplomatic representation to Sudan, and directed to seek a UN Security Council Resolution to impose an arms embargo on Sudan and to deny Khartoum oil revenue.

As a further means of pressuring the Government of Sudan, the bill takes the extra steps of prohibiting the normalization of relations between the Government of Sudan and the United States and the disbursement of any U.S. funds to support a comprehensive north-south agreement unless the President certifies in six months the Government of Sudan has stopped attacking civilians, demobilized and disarmed the janjaweed, ceased harassing aid workers, and cooperated with the deployment of the African Union ceasefire monitoring team. And for every 6 months the government of Sudan continues its reign of terror in Darfur, the amount that otherwise would have been available to support the north-south peace agreement—$800 million—is reduced by $50 million.

Perhaps the most important piece of this bill is an authorization for $200 million to provide much needed relief for the people of Darfur. The money is offered with no strings attached. The needs on the ground in Darfur and Chad are urgent and we must respond quickly and robustly without conditions or caveats.

I hope my colleagues will support this bill, as it provides both help for Sudanese civilians affected by war in western Sudan and an incentive for Khartoum to stop the violence and allow the international community to assist the victims of what our own Government has called the world's worst humanitarian crisis.

I yield the floor.

Mr. WYDEN. Mr. President, the United States Senate has now confirmed more than 170 of President Bush's judicial nominees. The nomination the Senate is considering today—that of William G. Myers III for a lifetime seat on the United States Court of Appeals for the Ninth Circuit—is different from many because of both the background and experience of the nominee and the direct and lasting influence the nominee's decisions will have on Oregon and her citizens. This nominee's rulings will affect the fate of environmental and other safeguards in nine western States, including Oregon.

After a career as a grazing and mining industry lobbyist, Mr. Myers worked as Solicitor General for the Department of Interior, responsible for Indian Affairs and most Federal lands. In his position at the Department of Interior, Mr. Myers continued to advocate for his former clients, overturning precedent to allow mining on sacred Indian grounds and rendering a decision in direct response to a case he participated in as a lobbyist. Not only has Mr. Myers refused to recuse himself from cases where there may be a conflict of interest, he has limited judicial experience. He received a partial Not Qualified rating from the American Bar Association and has minimal courtroom experience. He has never tried a jury case and never been involved as counsel in any criminal ligation. Unfortunately, Mr. Myers has demonstrated neither the experience nor judicial temperament to qualify him for this position.

As a result of his performance as Solicitor General, at least 180 groups have come out in opposition to his nomination. Among those opposing his nomination are every major tribe in this Nation—including the Confederated Tribes of Siletz Indians, the Cow Creek, Warm Springs, and Umatilla tribes all from Oregon, and the National Congress of American Indians, which represents over 250 tribes nationwide, as well as Oregon groups such as the Oregon Natural Resources Council. The Oregonian just published an editorial today, which may have said it best: ''Myers' anti-environmental activism by itself shouldn't disqualify him. The problem—and this gets back to his lack of judicial experience—is that he has no track record whatsoever to show how he would separate his ideology from his interpretation of the law on the Nation's second-highest court.''

Mr. President, I take very seriously the Senate's role to advise and consent to the President's nominations, and in this instance, the facts require that I withhold my consent on this nominee.

Mrs. FEINSTEIN. Mr. President, I rise to urge my colleagues to oppose the nomination of William Myers to serve on the U.S. Court of Appeals for the Ninth Circuit, and to vote no on the motion to close debate. I came to my decision after a careful review of Mr. Myers' professional record. That review has convinced me that he is not the proper person to serve on this highly influential Federal court of appeals, which oversees all Federal litigation in my home State of California.

I met with William Myers and I found him to be an extremely polite and personable man. But I have serious reservations about whether he has the professional qualifications to serve on the Ninth Circuit. I also have serious doubts about his ability to rule on cases, particularly environmental and land-use cases, in an impartial, even-handed way.

A position on the appellate court should be reserved for our Nation's best legal minds and most accomplished attorneys. But, the American Bar Association gave Mr. Myers a partial ''not qualified'' rating. A key factor was his lack of legal experience.

This nominee has little litigation experience in either State or Federal court. By his own account, he has taken only a dozen cases to verdict—and six of those occurred before 1985 when he was a newly minted lawyer. He has never served as a counsel in criminal litigation. Even as Solicitor of the Department of Interior, Myers had no role in writing legal briefs.

Mr. Myers has spent a large part of his legal career as a lobbyist for cattle

and grazing interests. Attorneys are obligated to zealously represent their clients and there is nothing wrong with this representation. But, I am troubled by a number of extreme comments that he made as an advocate.

For example, in a 1996 article, Myers equated Federal management of rangelands with the ''tyrannical actions of King George'' against the American colonists. According to Myers, these tyrannical practices included:

> over-regulation and efforts to limit [ranchers'] access to federal rangelands, revoke their property rights, and generally eliminate their ability to make a living from the land.

Source: ''Western Ranchers Fed Up with the Feds,'' Forum for Applied Research and Public Policy, winter 1996.

Equating Federal rangeland policy with the tyrannical policies that sparked the American revolution is strong language. But when asked by Senator LEAHY to back up his claim, Myers could not come up with any examples.

Similarly, after the California Desert Protection Act was passed, he described the law as ''an example of legislative hubris.'' The source is a book chapter: ''Farmers, Ranchers, and Environmental Law,'' 1995, at page 209. As the author of the California Desert Protection Act, I was quite struck by this statement. Myers himself has acknowledged his ''poor choice'' of words, but this is one more piece of evidence that Mr. Myers can be intemperate and extreme.

The California Desert Protection Act created the Joshua Tree National Park, the Death Valley National Park, and the Mojave National Preserve. These are among our Nation's environmental jewels.

In total, the act set aside 7.7 million acres of pristine California wilderness, 5.5 million acres as a national park preserve, and provided habitat for over 760 different wildlife species. It has provided recreation and tourism for over 2.5 million people, provided more than $237 million in sales, more than $21 million in tax revenue, and more than 6,000 new jobs. This is what Myers called ''legislative hubris.''

Similarly, in a 1994 article, entitled ''Having Your Day in Court,'' Myers railed against ''activist'' judges. He wrote of environmental groups:

> They have aggressively pursued their goals before friendly judges who have been willing to take activist positions and essentially legislate from the bench.

Source: National Cattlemen Magazine, November/December 1994, at page 34.

To illustrate his argument, he wrote:

> No better example can be found than that of wetlands regulation. The word ''wetlands'' cannot be found in the Clean Water Act. Only through expansive interpretation from activist courts has it come to be such a drain on the productivity of American agriculture.

When I and other Senators pointed out that, 10 years prior to his article, the Supreme Court had unanimously upheld the application of the Clean Water Act to protect wetlands, Myers backtracked and acknowledged Supreme Court precedent. He further acknowledged that he could not recall any specific cases that would justify the argument he made in his article.

Similarly, Myers, in another article, wrote that environmental groups are ''mountain biking to the courthouse as never before, bent on stopping human activity wherever it may promote health, safety, and welfare.'' Source: ICA Line Rider, February, 1998. When queried about these statements, Myers again backtracked. And he has argued that he was merely the zealous lobbyist taking tough positions on behalf of his client.

There is one area of Myers' career where he can't attribute his words and actions solely to his role as a legal advocate. It is Myers' troubling body of work as Solicitor of the Department of Interior in the Bush administration. His record in this position provided for me the ''tipping point'' against his nomination.

As Solicitor of Interior, Myers' client was the American public. He had a duty to carry out his work in an impartial fashion just as he would if confirmed to be a Ninth Circuit judge. Nevertheless, on multiple occasions as Solicitor, Myers engaged in actions that raised questions about his impartiality and professional qualifications.

One of Myers two formal opinions as Solicitor involved the proposed Glamis Gold Mine in California.

During the Clinton administration, then-Solicitor Leshy wrote an opinion that led to the denial of an industry proposal which would have carved an 880-foot deep, mile-wide, open-pit gold mine out of 1,600 acres of ancestral tribal land in Imperial County, CA.

The Leshy opinion came out of an exhaustive review process spanning 5 years, three environmental documents, as well as several formal Government-to-Government consultations with the affected tribe, the Quechan Tribe. Within months of becoming Solicitor, Myers reversed the Leshy opinion.

In coming to his decision, Myers met personally with industry representatives, but not with the affected tribe. This one-sided dealing cannot be justified or explained away—particularly because Myers was mandated by law to engage in Government-to-Government consultation with the tribes and to protect sacred Native American religious sites.

Given that Myers would not even meet with the tribes to hear their point of view, it was not surprising that when Myers subsequently issued an opinion in favor of the industry, the District judge determined that Myers ''misconstrued the clear mandate'' of the applicable environmental law.

In his only other major opinion as Solicitor, Myers reversed a Clinton administration regulation on grazing permits challenged by his former clients, the Public Lands Counsel.

The issue involved whether environmental groups such as the Grand Canyon Trust could buy grazing permits from willing sellers in order to retire them. Myers, contrary to his strong support for property rights and free-market principles in other areas of Government regulation, found such a practice illegal.

Further, as the Los Angeles Times has reported, Solicitor Myers recommended that California State Representatives HERGER and DOOLITTLE introduce a private relief bill giving $1 million worth of public land in Marysville, CA, to a private firm. Source: ''Interior Attorney Pushed Land Deal,'' Los Angeles Times, March 8, 2004, at B1.

The land, called locally the Yuba Goldfields, consists of 9,670 acres of gravel mounds and ponds created by hydraulic mining during the 19th century. According to the Bureau of Land Management, the land contains sand and rock that could be worth hundreds of millions of dollars for construction projects.

It turns out the companies seeking legislative relief did not have a valid claim to the land and had never even paid taxes on the property. And since 1993, the property had been carried on the county's tax records as public lands.

I am concerned that Myers committed the Department to support a bill without first doing the basic research needed to evaluate the issue, like consulting with local Bureau of Land Management officials.

I would like to comment briefly on one other area. Mr. Myers' nomination is to the Ninth Circuit. Some might argue that circuit could use some shaking up. But criticisms along those lines of the Ninth Circuit are not justified and do not do justice to the Ninth Circuit's judges.

This is not the time or the place for a long discussion of the Ninth Circuit generally. But I do want to cite just a few statistics to show that the Ninth Circuit's decisions are well within the mainstream of other circuit courts.

From 1994 to 2002, nationwide, the Supreme Court granted certiorari in only .23 percent of all Federal appellate cases. The Ninth Circuit had numbers that were a bit higher for that time period; the Supreme Court granted certiorari in .37 percent of all Ninth Circuit cases for those years. But while higher than average, this was entirely within the mainstream of other circuit courts. The range among circuits for that time period ranged from .13 percent of all Eleventh Circuit cases, to .5 percent for all DC Circuit cases. The Ninth Circuit is clearly in the mainstream of how its cases are treated by the Supreme Court.

Based on Myers' record, over 170 national groups have decided to oppose his nomination, including organizations that usually don't get involved in nominations. The National Congress of American Indians, NCAI, a coalition of

more than 250 tribal governments, is opposing the nomination and they previously have not weighed in on any Bush-nominated judges. The National Wildlife Federation, which has never in its 68-year history opposed a judicial nominee, opposes Myers.

In closing, I would offer the observations of Joseph Sax, a nationally renowned professor of environmental and natural resources law at the Boalt Hall, U.C. Berkeley, who is familiar with Myers' work.

Sax writes:

I do strongly believe that we are entitled to have persons of professional distinction appointed to important posts such as that of the U.S. Court of Appeals. Neither based on his experience as a practicing lawyer, nor while serving as Solicitor at Department of Interior has Myers distinguished himself, nor has he made any significant contributions to the law in his writings. . . . We can do much better.

Given Myers unremarkable record and the serious questions about his capability to judge cases impartially, I do not believe we should confirm him to the Ninth Circuit. So I will vote nay.

Mr. FEINGOLD. Mr. President, I oppose the nomination of William G. Myers to the Ninth Circuit Court of Appeals. After attending the hearing on his nomination, listening to his testimony, and reviewing his responses to my written questions, I am not persuaded that Mr. Myers can set aside his personal views and objectively evaluate cases that come before him. Many times during the nomination hearing, Mr. Myers simply evaded or refused to answer questions that were posed to him, claiming that he could not comment on an issue that could come before him if he is confirmed.

This was not the approach taken by at least some of President Bush's nominees. Then-Professor, now-Judge Michael McConnell, for example, was forthcoming in his testimony and answers to written questions. He convinced me in his hearing that he would put aside his personal views if he were confirmed to the bench. Mr. Myers did not.

Since Mr. Myers has never served as a judge, his published articles, his past legal work, his legal opinions at the Department of the Interior, and his testimony before the Judiciary Committee are all we have to assess his legal philosophy and views. This nominee did not simply make a stray comment that can be interpreted as indicating strong personal disagreement with our nation's environmental laws; he has a long record of extreme views on the topic.

Mr. Myers has called the Clean Water Act an example of ''regulatory excess.'' He has stated that critics of the administration's policies are the ''environmental conflict industry.'' He has stated that conservationists are ''mountain biking to the courthouse as never before, bent on stopping human activity wherever it may promote health, safety, and welfare.'' He even compared the management of public lands to King George's ''tyrannical'' rule over American colonies.

Over 175 environmental, Native American, labor, civil rights, women's rights, disability rights, and other organizations oppose the nomination of Mr. Myers. This opposition speaks volumes about the concern that many potential litigants have about his views on a diverse range of issues that would come before his court. Rather than explaining what his views were during the nomination hearing or in responses to follow-up questions, Mr. Myers repeatedly ducked questions posed by me and my colleagues.

For example, during the hearing Mr. Myers was asked to identify which regulations he considered to be ''tyrannical.'' After pointing out that he wasn't criticizing Government employees, which obviously wasn't the question, Mr. Myers finally identified a previous Federal rangeland policy. Yet, when pressed, Mr. Myers would not say that he personally believed these regulations were unneeded, but that he was merely ''advocating on behalf of my clients.'' This is what all nominees say, of course, when challenged about past statements made on behalf of clients, but since Mr. Myers has never been a judge or a law professor, we have no other record to evaluate. And since he was repeatedly unwilling to tell us about his personal views in his hearing, we certainly cannot ignore his previous published statements on important legal issues that he will be called upon to decide.

Mr. Myers's views on the jurisdiction of Federal environmental laws, which he has called ''top down coercion,'' also concern me. Mr. Myers authored a Supreme Court amicus brief on behalf of the National Cattlemen's Beef Association and others in an important case dealing with the jurisdiction of the Clean Water Act, Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers. The SWANCC case involved a challenge to the Federal Government's authority to prevent waste disposal facilities from harming waters and wetlands that serve as vital habitats for migratory birds. Mr. Myers argued in this brief that the commerce clause does not grant the Federal Government authority to prevent the destruction and pollution of isolated interstate waters and wetlands. The Department of Justice, on behalf of the Army Corps and EPA, has filed approximately 2 dozen briefs in Federal court since the SWANCC decision. DOJ has consistently argued that the Clean Water Act (CWA) does not limit coverage of the Clean Water Act to navigable-in-fact waters.

When I asked Mr. Myers about his view of the Clean Water Act, Mr. Myers would not say whether he agrees with this administration's consistent interpretation of the SWANCC case. He would not provide any information on how he reads the Supreme Court's SWANCC decision other than saying that it is ''binding precedent'', nor would he state what waters, if any, should not receive Federal Clean Water Act protection post-SWANCC. His refusal to respond to these questions gives me pause because of a recent Ninth Circuit decision that ruled that the SWANCC decision should be read narrowly and that wetlands, streams and other small waters remain protected by the statute and implicitly that the rules protecting those waters are constitutional. While Mr. Myers indicated that he would follow this Ninth Circuit precedent, he refused to elaborate on his views on this crucial issue.

In follow-up questions, I also asked Mr. Myers about a 1994 article he wrote for the National Cattlemen Beef's Association, which he also represented in the SWANCC case. Myers wrote that environmental organizations have:

aggressively pursued their goals before friendly judges who have been willing to take activist positions and essentially legislate from the bench. No better example can be found than that of wetlands regulation.

Mr. Myers argued:

The word ''wetlands'' cannot be found in the Clean Water Act. Only through expansive interpretation from activist courts has it come to be such a drain on the productivity of American agriculture.

Mr. Myers' answers to my questions about this article were not forthcoming. Mr. Myers would not list any of the cases he was referring to in that article or any cases of which he had subsequently become aware in which there has been an ''expansive interpretation from activist courts'' of ''wetlands regulation.'' Nor could he provide me with his analysis of United States v. Riverside Bayview Homes, Inc., the 1985 case in which the United States Supreme Court unanimously upheld the Reagan administration's application of the Clean Water Act to protect wetlands. Mr. Myers stated that he considered the case to be binding precedent, which of course it is, but that doesn't shed much light on his views on the Clean Water Act.

I am also deeply troubled by Mr. Myers's record as Solicitor General at the Department of the Interior. During his tenure as the chief lawyer for the Department, Mr. Myers authored a very controversial Solicitor's opinion, and approved an equally controversial settlement. That Solicitor's opinion overturned a previous ruling regarding the approval of mining projects and greatly limited the authority of the Interior Department to deny mining permits under the Federal Land Policy Management Act—FLPMA.

FLPMA amends the Mining Law of 1872 in part by requiring that:

in managing public land the Secretary shall, by regulation or otherwise take any action necessary to prevent the unnecessary or undue degradation of public lands.

In the Solicitor's opinion, Mr. Myers interpreted this law to mean that the Government could only deny a project to prevent unnecessary and undue degradation of public lands. Thus, if the

proposed mining activity is ''necessary,'' then Mr. Myers declared that the Government would have no authority to prevent a mine from going forward, even if it would harm sacred Native American grounds, historic sites, or environmentally sensitive areas. This legal opinion interpreting DOI regulations is one of the only guides we have to evaluate how a Judge Myers would interpret statutes

Last year, a Federal court found that Mr. Myers's opinion

misconstrued the clear mandate of FLPMA, which by its plain terms vests the Secretary of the Interior with the authority—indeed the obligation—to disapprove mines that ''would unduly harm or degrade the public land.''

In response to questions posed about this opinion at the hearing, Mr. Myers could not adequately explain his statutory interpretation of ''unnecessary or undue,'' nor could he articulate his rationale for finding that the word ''or'' in the statute actually meant ''and.''

After Myers's opinion, Secretary Norton approved the mining permit for the 1600-acre cyanide heap-leaching Glamis gold mine located on sacred tribal lands. Tribal leaders have called the Myers' legal opinion and the resulting decision to approve the Glamis mine ''an affront to all American Indians.'' The National Congress of American Indians, which includes more than 250 American Indian and Alaska Native tribal governments, formally opposes the Myers nomination.

I have discussed my concerns about this nominee at some length because I wanted to show that my opposition to Mr. Myers is not based on a single intemperate remark he has made as an advocate. I simply am not convinced that Mr. Myers will put aside his personal policy views and fairly interpret and apply the law as passed by Congress. He has shown a willingness to disregard clear statutory language as Solicitor General of the Department of the Interior.

It is not enough for Mr. Myers to pledge that he will follow Supreme Court precedent. As we all know, the Supreme Court has not answered every legal question. Circuit court judges are routinely in the position of having to address novel legal issues. Mr. Myers's writings and speeches raise the question of whether he has prejudged many important legal questions. His answers to committee questions did not satisfy me that he has not. I will vote ''No'' on the nomination.

I yield the floor.

Mr. JEFFORDS. Mr. President, I rise today to express my opposition to the nomination of William G. Myers III to the Ninth Circuit Court of Appeals.

Looking over Mr. Myers record, it is clear that we do not see eye-to-eye on environmental policy. He once complained that the ''federal government's endless promulgation of statutes and regulations harm the very environment it purports to protect.'' Mr. Myers believes that the Endangered Species Act and the Clean Water Act's wetlands protections are examples of ''regulatory excesses.'' He has also compared the Government's management of public lands to King George's rule over the American colonies.

But policy disagreements alone are not enough to disqualify an individual from serving on our Nation's lower courts. I dare say that there has not been a judge confirmed during my almost 16 years in the Senate where the nominee and I have agreed on all issues. I believe the same could be said by any Senator who has ever served in the Senate.

For me to oppose a judicial nomination there needs to be more than just a disagreement on policy; there needs to be an issue concerning judicial temperament or competence. When reviewing the record compiled on Mr. Myers by the Judiciary Committee, I do believe there are serious deficiencies with this nomination, beyond a disagreement on policy, and I must oppose it.

First, Mr. Myers has very little litigation experience, a critical factor for serving on the circuit court level. In fact, he has never been a judge, nor has he participated in a jury trial, and only rarely has he participated in a nonjury trial. He has never been a law professor, and he has written only a few law review articles. Some candidates who I have supported in the past have lacked one kind of experience—being a judge, professor, or prolific writer—but have compensated for that gap with strength in other areas. Mr. Myers' resume, however, does not show any other such compensatory experience.

I am also greatly concerned that Mr. Myers' past actions bring into question his ability to separate his strong beliefs from his judicial duty to rule dispassionately on the law. This is a critical trait for any judge, at any level of the judiciary, and one that appears to be lacking in this nominee. For example, when he was the Interior Department Solicitor, which is the chief lawyer for the Department, he was sworn to defend the public interest and enforce Federal land regulations. However, in many actions taken by Mr. Myers, he used his position to weaken environmental regulations to the benefit of his former mining and grazing industry clients. This is a strong indication of his inability to separate his beliefs from his duty as a judge, and he must not be allowed to carry that to the Ninth Circuit Court of Appeals.

For those reasons I will oppose his nomination. In addition, as the ranking member of the Senate Environment and Public Works Committee, I am distressed that the majority leadership has decided to use valuable floor time to debate a nominee with horrible environmental perspectives and no chance at confirmation, while failing to take action on many important environmental issues.

We should be enacting comprehensive power plant antipollution legislation. We should be looking for new opportunities to improve the efficiency of our cars, homes, and buildings to help curb air pollution and reduce global warming. We should pass standards to improve reliable delivery of electricity. We should agree to produce more renewable motor fuels that meet Federal Clean Air requirements. We should build a pipeline to bring needed natural gas from Alaska to the lower 48 States. We should end manipulative electricity marketing practices that gouge our consumers. Finally, we should expand our use of renewable energy. We could do all these things, which would provide more energy for our country, and do them with substantial Senate support rather than debate a nomination that does not have the support necessary to be confirmed.

We also have failed to ensure that the United States continues to exercise leadership in multilateral efforts to protect the global environment. Even though the United States led the way in negotiating and signing several important international environmental treaties, we are not yet a party to these treaties because of a failure to pass necessary implementing legislation. The Law of the Sea Treaty is a perfect example. The Stockholm Convention on Persistent Organic Pollutants is, unfortunately, another.

These are some of the important environmental issues the Senate should be spending its precious remaining time on, and not on divisive nominees who have no chance for confirmation.

Mr. LEAHY. Mr. President, earlier today I discussed my concerns about the nomination of William Myers to a lifetime job as a judge on the U.S. Court of Appeals for the Ninth Circuit. Before we vote on the motion of Republican Senators to invoke cloture on this nomination, I would like to highlight a few things.

This nomination was reported out of the Judiciary Committee on April Fool's Day over the objections of every single Democratic member of the committee.

The Republican majority has failed to bring this nomination up for a vote during the past 4 months, knowing that Mr. Myers is strongly opposed by the widest coalition of citizen groups that have ever opposed a circuit court nominee in U.S. history. Suddenly last Friday, Republicans filed their cloture motion to end a debate that had not even begun about why President Bush nominated such an anti-environment activist for a judgeship. They set debate for a time they knew few were scheduled to be here on such short notice. It seems that they are afraid of a robust and thorough debate on the merits, or lack of merit, of this nomination but they are eager to try to create a political issue out of it.

I do not think it is too skeptical to suggest that Republicans are bringing this nomination up now only to try to politicize the judicial nominations issue further in advance of the Presidential nominating conventions. This

is the partisan game plan proposed by the rightwing editorial page of the Washington Times and White House and rightwing advocacy groups such as the Committee for Justice. The White House and its Republican friends in this body should stop playing politics with these lifetime jobs as judges. Stop playing politics with our courts. Stop proposing extremists for our Federal bench. Stop trying to remake the Federal judiciary from an independent branch of Government into just another wing of the Republican Party.

We have stopped only a handful of this President's most extreme judicial nominees, even though Republicans blocked more than 60 of President Clinton's judicial nominees from getting an up-or-down vote. Republicans blocked nearly 10 times as many of President Clinton's moderate and well-qualified judicial nominees. Democrats have been judicious and sought to check only the worst nominations President Bush has proposed. This nomination is one of the most controversial and divisive, and the worst choice in terms of environmental protections and policy. It is so obvious he was chosen with the hope that he will continue to help roll back protections for clean water, clean air, and endangered ecosystems from the judicial bench.

Mr. Myers was picked to be a lifetime-appointed judge because for most of his working life he has been a strident opponent of environmental laws. The nomination of this industry lobbyist who has barely been inside a courtroom exemplifies the revolving door between corporate interests and the Bush administration. It is no wonder that his confirmation is opposed by more than 180 environmental, tribal, labor, civil rights, disability rights, women's rights and other citizen groups. I ask unanimous consent to have a list of those opposing this nomination printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LETTERS OF OPPOSITION TO THE NOMINATION OF WILLIAM G. MYERS III—NOMINEE TO THE NINTH CIRCUIT COURT OF APPEALS

PUBLIC OFFICIALS

Senator James M. Jeffords, D–VT.

Members of Congress: George Miller, CA–7 (D); Peter A. DeFazio, OR– (D); Xavier Becerra, CA–31 (D); Luis V. Gutierrez, IL–4 (D); Jane Harman, CA–36 (D); Tom Lantos, CA–12 (D); Ed Pastor, AZ–4 (D); Nancy Pelosi, CA–8 (D); Raul Grijalva, AZ–7 (D); Earl Blumenauer, OR–3 (D); Grace F. Napolitano, CA–38 (D); Adam Smith, WA–9 (D); Anna G. Eshoo, CA–14 (D); Susan A. Davis, CA–53 (D); Dennis A. Cardoza, CA–18 (D); Jay Inslee, WA–1 (D); Zoe Lofgren, CA–16 (D); Bob Filner, CA–51 (D); Henry A. Waxman, CA–30 (D); Joe Baca, CA–43 (D); Linda T. Sánchez, CA–39 (D); Lucille Roybal-Allard, CA–34 (D); Maxine Waters, CA–35 (D); Jim McDermott, WA–7 (D); Barbara Lee, CA–9 (D); Brad Sherman, CA–27 (D); Ellen O. Tauscher, CA–10 (D); Hilda L. Solis, CA–32 (D); Jose E. Serrano, NY–16 (D); Lois Capps, CA–23 (D); Lynn C. Woolsey, CA–6 (D); Michael M. Honda, CA–15 (D); Mike Thompson, CA–1 (D); Robert T. Matsui, CA–5 (D); Pete Stark, CA–13 (D); Neil Abercrombie, HI–1 (D); Rick Larsen, WA–2 (D); Diane E. Watson, CA–33 (D); Sam Farr, CA–17 (D); Juanita Millender-McDonald, CA–37 (D); Adam B. Schiff, CA–29 (D); and Loretta Sanchez, CA–47 (D).

Members of the California State Senate: John Burton, President Pro Tempore (D-San Francisco); Shiela Kuehl, Chair, Senate Natural Resources Committee (D-Los Angeles); and Byron Sher, Chair, Senate Environmental Quality Committee (D-Stanford).

GROUPS

Affiliated Tribes of Northwest Indians; AFL-CIO; Ak-Chin Indian Community, Maricopa, AZ; Bear River Band of Rohnerville Rancheria Tribe, Loleta, CA; Big Sandy Rancheria, Auberry, CA; Cabazon Band of Mission Indians, Indio, CA; Cachil Dehe Band of Wintun Indians, Colusa, CA; California Nations Indian Gaming Association; California Rural Indian Health Board, Sacramento, CA; Circle Tribal Council, Circle, AK; Confederated Tribes of Siletz Indians, Siletz, OR; Delaware Tribe of Indians, Bartlesville, OK; Elko Band Council, Elko, NV (Te-Moak Tribe of Western Shoshone Indians of Nevada); Fallon Paiute-Shoshone Tribe, Fallon, NV; Friends of the Earth; Habematolel Pomo of Upper Lake, Upper Lake, CA; Ho-Chunk Nation, Black River Falls, WI; Hopland Band of Pomo Indians, Hopland, CA; Inaja Cosmit Band of Mission Indians; Inter Tribal Council of Arizona; Jamestown S'Klallam Tribe, Sequim, WA; Justice for All Project; Kalispel Tribe of Indians, Usk, WA; Kaw Nation, Kaw City, OK; Leadership Conference on Civil Rights; Mesa Grande Band of Mission Indians; Mooretown Ranchiera (Concow-Maida Indians); NAACP; National Congress of American Indians; National Senior Citizens' Law Center; National Wildlife Federation; Nightmute Traditional Council, Nightmute, AK; Oglala Sioux Tribe, Pine Ridge, SD; Paskenta Band of Nomlaki Indians, Orlando, CA; Passamaquoddy Tribe, Perry, ME; Public Employees for Environmental Responsibility; Pueblo of Laguna, Laguna, NM; Quechan Indian Tribe, Ft. Yuma Reservation; Ramona Band of Cahuilla Mission Indians, Anza, CA; Redding Rancheria Tribe, Redding, CA; San Pasqual Band of Mission Indians, San Diego County, CA; Santa Ysabel Band of Diegueno Indians, Tracts 1, 2, and 3; Seminole Nation of Oklahoma; Timbisha Shoshone Tribe of the Western Shoshone Nation, Bishop, CA; U ta Uta Gwaita Paiute Tribe, Benton, CA; Viejas Band of Kumeyaay Indians, Alpine, CA; and Winnebago Tribe of Nebraska

Coalition Letter from Civil, Women's and Human Rights Organizations: Advocates for the West; Alliance for Justice; American Rivers; Americans for Democratic Action; Clean Water Action; Committee for Judicial Independence; Defenders of Wildlife; EarthJustice; Endangered Species Coalition; Friends of the Earth; Leadership Conference on Civil Rights; Mineral Policy Center; NARAL Pro-Choice America; National Abortion Federation; National Environmental Trust; National Organization for Women; National Resources Defense Council; The Ocean Conservancy; Public Employees for Environmental Responsibility; Sierra Club; and The Wilderness Society.

Coalition Letter from Civil, Disability, Senior Citizens', Women's, Human rights, Native American, and Environmental Rights Organizations:

NATIONAL GROUPS

ADA Watch/National Coalition for Disability Rights; Alliance for Justice; American Lands Alliance; American Planning Association; American Rivers; Americans for Democratic Action; Association on American Indian Affairs; Campaign to Protect America's Lands; Citizens Coal Council; Clean Water Action; Coast Alliance; Community Rights Counsel; Defenders of Wildlife; Disability Rights Education and Defense Fund; Earth Island Institute; Earthjustice; Endangered Species Coalition; Environmental Law Association; Environmental Working Group; First American Education Project; Forest Service Employees for Environmental Ethics; Friends of the Earth; Indigenous Environmental Network; Leadership Conference on Civil Rights; League of Conservation Voters; Mineral Policy Center/Earthworks; The Morning Star Institute; National Association of the Deaf; National Congress of American Indians; National Employment Lawyers Association; National Environmental Trust; National Forest Protection Alliance; National Organization for Women; National Partnership for Women and Families; National Senior Citizens Law Center; National Tribal Environmental Council; Natural Heritage Institute; Natural Resources Defense Council; New Leadership for Democratic Action; Legal Momentum, formerly NOW Legal Defense and Education Fund; The Ocean Conservancy; People For the American Way; Progressive Jewish Alliance; PEER (Public Employees for Environmental Responsibility); REP America (Republicans for Environmental Protection); Sierra Club; Society of American Law Teachers; U.S. Public Interest Research Group; The Wilderness Society.

REGIONAL, STATE AND LOCAL GROUPS

Action for Long Island; Advocates for the West; Alaska Center for the Environment; Alaska Coalition; Alaska Rainforest Campaign; Arizona Wilderness Coalition; As You Sow Foundation; Audubon Society of Portland; Buckeye Forest Council; Cabinet Resource Group; California Employment Lawyers Association; California Nations Indian Gaming Association; California Native Plant Society; Californians for Alternatives to Toxics; California Wilderness Coalition; Cascadia Wildlands Project; Center for Biological Diversity; Citizens for the Chuckwalla Valley; Citizens for Victor!; Clean Water Action Council; Coast Range Association; Committee for Judicial Independence; Cook Inlet Keeper; Desert Survivors; Endangered Habitats League; Environmental Defense Center; Environmental Law Caucus, Lewis and Clark Law School; Environmental Law Foundation; Environmental Law Society, Vermont Law School; Environmental Protection Information Center; Environment in the Public Interest; Escalante Wilderness Project; Eugene Free Community Network; Florida Environmental Health Association; Forest Guardians; The Freedom Center; Friends of Arizona Rivers; Friends of the Columbia Gorge; Friends of the Inyo; Friends of the Panamints; Georgia Center for Law in the Public Interest; Gifford Pinchot Task Force; Grand Canyon Trust; Great Basin Mine Watch; Greater Yellowstone Coalition; Great Old Broads for Wilderness; Great Rivers Environmental Law Center; Headwaters; Heal the Bay; Hells Canyon Preservation Council; High Country Citizens' Alliance; Idaho Conservation League; Inter Tribal Council of Arizona; Jamestown S'Klallam Tribe; Kamakakuokalani Center for Hawaiian Studies; Kentucky Resources Council, Inc.; Kettle Range Conservation Group; Klamath Forest Alliance; Klamath Siskiyou Wildlands Center; Knob and Valley Audubon Society of Southern Indiana; Kootenai Environmental Alliance; Lake County Center for Independent Living; The Lands Council; Lawyers Committee for Civil Rights of the San Francisco Bay Area; Magic; Maine Women's Lobby; McKenzie Guardians; Mining Impact Coalition of Wisconsin; Mining Impacts Communication Alliance; Montana Environmental Information Center; Native Hawaiian

Leadership Project; Northern Regional Center for Independent Living; Northwest Ecosystem Alliance; Northwest Environmental Advocates; Northwest Environmental Defense Center; Northwest Indian Bar Association; Northwest Old-Growth Campaign; Oilfield Waste Policy Institute; Okanogan Highlands Alliance; Ola'a Community Center; Olympic Forest Coalition; Oregon Natural Desert Association; Oregon Natural Resources Council; Pacific Environmental Advocacy Center; Pacific Islands Community EcoSystems; Placer Independent Resource Services, Inc.; Quechan Indian Nation; Reno-Sparks Indian Colony; Resource Renewal Institute; Rock Creek Alliance; San Diego Baykeeper; San Juan Citizens Alliance; Santa Monica Baykeeper; Save the Valley, Inc.; Selkirk Conservation Alliance; Siskiyou Project; Sitka Conservation Society; Southern Utah Wilderness Alliance; Southwest Environmental Center; St. Lucie Audubon Society; Tennessee Clean Water Network; Umpqua Watersheds; Valley Watch, Inc.; Waipa Foundation; Washington Environmental Council; WashPIRG; Waterkeepers Northern California; West Virginia Rivers Coalition; Western Environmental Law Center; Western Land Exchange; Western San Bernardino County Landowner's Association; Western Watersheds Project; Wildlands CPR; Wild South; Wyoming Outdoor Council; and Yuba Goldfields Access Coalition.

ATTORNEYS AND LAW PROFESSORS

Michael Dennis, Round Hill, VA; and Joseph L. Sax, Boalt Hall, Berkeley, CA.

Joint letter from Attorneys and Law Professors in the 9th Circuit: Robert T. Anderson, Director of the Native American Law Center; Keith Aoki, Professor of Law, University of Oregon Law School; Annette R. Appell, Professor of Law, William S. Boyd School of Law, UNLV; Barbara Bader Aldave, Stewart Professor of Law, University of Oregon; Michael C. Blumm, Professor of Law, Lewis and Clark School of Law; Melinda Branscomb, Associate Professor of Law, Seattle University; Allan Brotsky, Professor of Law Emeritus, Golden Gate University School of Law; Robert K. Calhoun, Professor of Law, Golden Gate Law School; Erwin Chemerinsky, Professor of Law, University of Southern California; Marjorie Cohn, Professor of Law, Thomas Jefferson School of Law; Connie de la Vega, Professor of Law, University of San Francisco; Sharon Dolovich, Acting Professor of Law, University of California Los Angeles; Scott B. Ehrlich, Professor of Law, California Western School of Law; Roger W. Findley, Professor of Law, Loyola Law School; Catherine Fisk, Professor of Law, University of Southern California; Caroline Forell, Professor of Law, University of Oregon School of Law; Susan N. Gary, Associate Professor of Law, University of Oregon School of Law; Dale Goble, Professor of Law, University of Idaho; Carole Goldberg, Professor of Law, University of California Los Angeles; A. Thomas Golden, Professor of Law, Thomas Jefferson Law School; Betsy Hollingsworth, Clinical Professor of Law, Seattle University Law School; M. Casey Jarman, Professor of Law, University of Hawaii; Kevin Johnson, Professor of Law, University of California, Davis; Craig Johnston, Professor of Law, Lewis and Clark Law School; Arthur B. LaFrance, Professor of Law, Lewis and Clark Law School; Ronald B. Lansing, Professor of Law, Lewis and Clark Law School; David Levine, Professor of Law, University of California Hastings College of the Law; Susan F. Mandiberg, Professor of Law, Lewis and Clark Law School; Karl Manheim, Professor of Law, Loyola Law School; Robert J. Miller, Associate Professor of Law, Lewis and Clark Law School; John T. Nockleby, Professor of Law, Loyola Law School; David B. Oppenheimer, Professor of Law, Golden Gate University School of Law; Laura Padilla, Professor of Law, California Western School of Law; Clifford Rechtschaffen, Professor of Law, Golden Gate University School of Law; Naomi Roht-Arriaza, Professor of Law, University of California Hastings College of Law; Michael M. Rooke-Kay, Professor of Law Emeritus, Seattle University School of Law; Susan Rutberg, Professor of Law, Golden Gate University School of Law; Robert M. Saltzman, Associate Dean, University of Southern California Law School; Sean Scott, Professor of Law, Loyola Law School; Julie Shapiro, Associate Professor of Law, Seattle University Law School; Katherine Sheehan, Professor of Law, Southwestern Law School; Paul J. Spiegelman, Adjunct Professor of Law, Thomas Jefferson School of Law; Ralph Spritzer, Professor of Law, Arizona State University; John A. Strait, Associate Professor of Law, Seattle University; Jon M. Van Dyke, Professor of Law, University of Hawaii at Manoa; Martin Wagner, Adjunct Professor of Law, Golden Gate University School of Law; James R. Wheaton, President, Environmental Law Foundation; Bryan H. Wildenthal, Professor of Law, Thomas Jefferson School of Law; Gary Williams, Professor of Law, Loyola Law School; Robert A. Williams, Jr., Professor of Law and American Indian Studies, and Faculty Chair of the Indigenous Peoples Law and Policy Program, University of Arizona; and Jonathan Zasloff, Professor of Law, University of California Los Angeles.

CITIZENS

Nora McDowell, President, Inter Tribal Council of Arizona (19 member tribes); and Dyrck Van Hying, Great Falls, MT.

GROUPS EXPRESSING CONCERN OVER THE MYERS NOMINATION

Coalition Letter from Women's, Reproductive, and Human Rights Organizations: Alliance for Justice; American Association of University Women; Catholics for a Free Choice; Feminist Majority; Human Rights Campaign; NARAL Pro-Choice America; National Abortion Federation; National Council of Jewish Women; National Family Planning and Reproductive Health Association; NOW Legal Defense and Education Fund; National Partnership for Women and Families; National Women's Law Center; Planned Parenthood Federation of America; Religious Coalition for Reproductive Choice; and Sexuality Information and Education Council of the United States.

Mr. LEAHY. He is opposed because he should not be trusted with a lifetime job as an appellate judge. His record is too extreme.

If you watch what the Bush administration does, instead of just listening to what it says, there is much evidence of this administration's outright contempt for high environmental standards. This nomination, in itself, says something about that. This nomination is emblematic of so many of this administration's appointments, especially to sensitive environmental posts. Mr. Myers' Interior appointment was the first ''swoosh'' of the revolving door. His nomination by President Bush to one of the highest courts in the land completes the cycle.

I must oppose cloture on this nomination, and I hope that the Senate's vote today will say something about the higher priority that the Senate makes of environmental quality.

Mr. CHAFEE. Mr. President, today I will vote in favor of invoking cloture on the nomination of William G. Myers III to serve on the U.S. Court of Appeals for the Ninth Circuit. During the 108th Congress, the Senate has failed to invoke cloture on the nominations of Mr. Myers and several other circuit court nominees. I have supported invoking cloture on these nominations because I am concerned about how such filibusters will affect the judicial confirmation process, including the nominees of future Presidents. The overwhelming majority of editorial pages across the Nation agree that district and circuit court nominees are entitled to an up-or-down vote.

However, a vote to invoke cloture is not an automatic vote for confirmation. in fact, I joined several other Republicans in voting against a district court nominee earlier this month. I have heard from a number of Rhode Islanders who have serious concerns about Mr. Myers, particularly his views on property rights and environmental protection, and I will carefully weigh their objections should the Senate invoke cloture on his nomination in the future.

Ms. CANTWELL. Mr. President, over the last 3½ years, the Senate has approved 198 of President Bush's judicial nominees: more than were confirmed during President Reagan's first term, more than confirmed during the first President Bush's term, and more than were confirmed during President Clinton's second term, when the other party controlled this body.

The reality is that the Senate has made remarkable progress approving this President's nominees. Today, there are fewer Federal judicial vacancies than at any time in the last 14 years.

This is true because both sides of the aisle have been able to work together to identify talented, qualified, experienced nominees—nominees who can put their own ideologies aside and uphold the law.

We have a bipartisan selection process that has worked very well for Washington state. Members of Washington State's legal community, the White House, and my colleague Senator PATTY MURRAY and I worked together to review a group of applicants. I am proud of our work. This cooperative approach has produced a number of highly qualified judicial nominees—including two who were confirmed just last month—and I believe it is a sound model for other States.

Unfortunately, the nomination before us today—that of William Myers to the Ninth Circuit Court of Appeals—represents a break with this spirit of cooperation and fairness. As a Senator who represents a State in the Ninth District, I feel that I must explain why I have concluded that I have no choice but to oppose this nomination.

Other Senators have spoken about Mr. Myers' inexperience. I agree that the nominee before us has limited experience. He has never been a judge, he

has never tried a jury case, he has never served as counsel in any criminal litigation, and he has tried just twelve cases to verdict or judgment.

I am troubled that this administration believes such a candidate is an appropriate choice to serve on the U.S. Court of Appeals, just one level below the U.S. Supreme Court. But I would like to spend my time discussing some other problematic aspects of this nomination.

The decision this body makes on the nomination before us will have a long-lasting impact on the States of the Ninth Circuit. For one thing, the person appointed to fill this seat on bench will receive a lifetime appointment. For another, the Ninth Circuit decides on many cases that can have dramatic impacts on land management policy and environmental protections. Decisions about how to use our natural resources and public lands can have irrevocable consequences.

With this in mind, I am concerned that this nominee has compared the federal government's management of public lands to ''the tyrannical actions of King George'' over the American colonies.

More troubling in his view of the Commerce Clause. In the face of decades of established law, Mr. Myers has argued for a more limited interpretation of this key portion of the Constitution, which underpins much of Federal environmental law. Rhetoric is one thing; radically re-interpreting the Constitution is another.

I am disappointed that the Senate has spent so much time debating a judicial nominee with such a poor record on protecting the environment, instead of taking up legislation that could actually improve the environment.

And in addition to public lands issues, the Ninth Circuit often considers cases regarding Native American issues. Yet here, too, Mr. Myers's record is troubling.

In one case, Myers reversed existing policy of the Department of the Interior, without seeking public opinion or input from affected Tribes. His decision, which relied on his interpretation of the Federal Land Policy and Management Act, FLPMA, allowed a mining company to contaminate a large area of land in California that was sacred to the Quechan tribe.

But when a Federal judge reviewed the case—the only time a Federal judge reviewed Myers' work—he concluded, ''The Solicitor misconstrued the clear mandate of FLPMA.''

It is for reasons like this that the National Congress of American Indians—which has never in its history opposed a Federal judicial nominee—opposes this nominee. Together, 560 tribes have spoken up and voiced their strong concerns with his nomination.

The Affiliated Tribes of Northwest Indians, which represents tribes in Washington, Oregon, Montana, and the nominee's home State of Idaho, has also never previously opposed a judicial nominee. But they believed it was necessary to step forward and oppose Mr. Myers. As they noted in a letter to me and other Northwest Senators, ''We do not take this step lightly—but when a nominee has acted with such blatant disregard for federal law and our sacred places, we must speak out.''

I ask unanimous consent that the Affiliated Tribes' letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AFFILIATED TRIBES
OF NORTHWEST INDIANS,
*Portland, OR, March 19, 2004.*

Re: Opposition to the Nomination of William G. Myers III to the 9th Circuit Court of Appeals.

Senators: STEVENS, MURKOWSKI, MCCAIN, KYL, FEINSTEIN, BOXER, INOUYE, AKAKA, CRAIG, CRAPO, BAUCUS, BURNS, REID, ENSIGN, WYDEN, SMITH, MURRAY, CANTWELL,

*U.S. Senate,*
*Washington, DC.*

Dear SENATORS: We write to you today as leaders of tribes within the jurisdiction of the 9th Circuit Court of Appeals to express our strong opposition to the confirmation of William G. Myers III to the 9th Circuit Court of Appeals. As President of the Affiliated Tribes of Northwest Indians/Chairman of the Coeur d'Alene Tribe in Idaho, and as Treasurer of the National Congress of American Indians/Chairman of the Jamestown S'Klallam Tribe, respectively, we represent a broad base of tribes in the Northwest who would be directly impacted by this nomination.

We have never before stepped forward to oppose a judicial nominee. We believe that the President is entitled to receive the consent of the Senate for his judicial appointments unless there are serious concerns regarding judicial fitness. However, former Solicitor of Interior Myers' disregard for federal law affecting Native sacred places compels our view that he is unable to fairly and impartially apply the law and thus should not be confirmed.

The U.S. government, as steward for millions of acres of Western lands, has accepted responsibility for maintaining and protecting religious sites of significance to Native Americans. This responsibility is clearly recognized not only by treaty and custom but also in laws such as the Federal Land Policy and Management Act (FLPMA).

Unfortunately, the nominee, while serving two years in the Bush administration as solicitor of the Department of the Interior, trampled on law, religion, and dignity. In his official capacity he orchestrated a rollback of protections for sacred native sites on public lands, although such places have been central to the free exercise of religion for many American Indians for centuries.

Most notably, despite his stewardship responsibility, with the stroke of his pen Myers reversed a crucial departmental decision that had been arrived at over a period of years with substantial public input. His action cleared the way for a massive hardrock mining operation employing cyanide to extract gold from enormous heaps of rock. This mine, run by Canada's Glamis Imperial Gold Company, stands to contaminate thousands of acres and destroy a vast swath of land in the California desert that is sacred to the Quechan tribe.

In one of only three formal opinions in his two-year tenure at Interior, Myers argued that the agency's Bureau of Land Management did not have authority under the FLMPA law to prevent the undue degradation of public lands that sometimes accompanies such mining operations. But this is contrary to the specific wording of the legislation, which requires the Department of the Interior to protect against public land degradation that is ''unnecessary or undue.''

Myers simply concluded that any practice necessary for a mining operation was, by definition, not undue. Such reasoning stands contrary to common sense and turns legislative statute on its head. While specifically addressing only the Glamis project, Myers's opinion, if followed, would block the Bureau from preventing undue degradation across millions of acres of public land.

It's hard to imagine a more fundamental misreading of the language and intent of the law. As Federal district Judge Henry Kennedy Jr.—the only judge to have reviewed Myers's handiwork—declared, ''The Solicitor misconstrued the clear mandate of FLPMA.''

Furthermore, the court held: ''FLPMA by its plain terms, vests the Secretary of Interior with the authority—and indeed the obligation—to disapprove of an otherwise permissible mining operation because the operation, though necessary for mining, would unduly harm or degrade the public land.'' No wonder the American Bar Association questions Myers's legal qualifications for a position on the Federal appellate bench.

Equally troubling to tribes in the 9th Circuit is the shameful exclusion of the Quechan Indian Nation from the decision to reconsider the Glamis project. Neither Myers nor Interior Secretary Gale Norton engaged in government-to-government consultation with the Quechan Indian Nation or other Colorado River tribes before reopening and reversing the Glamis debate.

The Ninth Circuit Court encompasses a huge area. It contains scores of reservations, more than one hundred Indian tribes, millions of Indian people, and millions of acres of public lands. Because so few legal cases ever reach the U.S. Supreme Court, the Ninth Circuit is often the court of last resort for deciding critically important federal and tribal land management issues.

Judges on this court must understand and respect tribal values and the unique political relationship between the federal government and tribal governments. Myers' actions and legal advice in the Glamis matter trample on tribal values, raise serious questions about his judgment, and demonstrate a clear lack of the impartiality necessary to decide cases affecting public lands.

We ask that you stand with us in opposing this nominee. We do not take this step lightly—but when a nominee has acted with such blatant disregard for Federal law and our sacred places, we must speak out.

ERNEST L. STENSGAR,
*President, Affiliated Tribes of Northwest Indians, Chairman, Coeur d'Alene Tribe.*
W. RON ALLEN,
*Chairman, Jamestown S'Klallam Tribe, Former President, National Congress of American Indians.*

Ms. CANTWELL. Mr. President, for the 29 tribes in my home State of Washington, and the many tribes throughout the West, this is a troubling report.

To be clear, I am not opposing Mr. Myers's nomination simply because we disagree on issues. I have voted for many of this President's nominees whose views on a range of issues differ from my own.

I have had ideological differences with many of the nominees put forth

by this administration, yet I have voted to approve the overwhelming majority of those candidates. I do not believe that a difference in a nominee's views alone justifies voting against him or her.

But I cannot assent to a nominee who I do not believe will uphold the law when it conflicts with his ingrained political philosophy. Unfortunately, I believe Mr. Myers is such a nominee.

Mr. Myers has written, ''Judge Bork's judicial philosophy was well within the parameters of acceptable constitutional theory, worthy of representation on the Supreme Court.'' More importantly, Mr. Myers indicated his support of ''judicial activism'' in his discussion of Bork's views: ''Interpretivism does not require a timid approach to judging or protecting constitutionally guaranteed rights . . . interpretivism is not synonymous with judicial restraint and may require judicial activism if mandated by the constitution.''

A Pacific Northwest newspaper, the Oregonian, summed up Mr. Myers's nomination this way: ''Myers has overwhelmingly looked out for industry interests while antagonizing a vast array of conservation groups, tribes, labor unions and civil-rights organization.'' I ask unanimous consent that this editorial be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Oregonian, July 20 2004]

WRONG PICK FOR 9TH CIRCUIT; SURELY THE WHITE HOUSE CAN FIND A MORE QUALIFIED NOMINEE FOR THE APPELLATE COURT THAN WILLIAM MYERS

In conservative doctrine, no court in the land is more out of step than the 9th U.S. Circuit Court of Appeals. It's considered a nest of ''activist'' judges whose liberal leanings produce some truly wacky rulings.

That reputation reared its head again Monday in a hearing on the nomination of William G. Myers III to a 9th Circuit vacancy. One Republican senator after another testified that the Idaho lawyer is just what's needed to bring some ''balance'' to the court.

Wrong. The 28-seat appellate court may indeed harbor some ideology-driven activists. But the solution isn't to add another ideology-driven activist.

Myers didn't get this nomination because of superior judicial fitness. He got it because of his political views and friendly relationships with industries besieged by environmental lawsuits.

He lacks any judicial experience, but that isn't the real problem. Many outstanding judges, such as Portland's Diarmuid O'Scannlain, were appointed to the 9th Circuit without coming up through the judicial ranks.

But unlike Scannlain, Myers wasn't hailed by his peers as a brilliant legal mind. He received only a tepid ''qualified'' rating by the American Bar Association's judicial review panel. Not one member rated him ''well-qualified,'' and several voted ''unqualified.''

No distinguished career in law won Myers the attention of the Bush administration. He toiled for years as a lobbyist for the mining industry and cattle interests before the White House appointed him to be the Interior Department's top lawyer in 2001.

In that role, Myers has overwhelmingly looked out for industry interests while antagonizing a vast array of conservation groups, tribes, labor unions and civil-rights organizations.

Myers' anti-environmental activism by itself shouldn't disqualify him. The problem—and this gets back to his lack of judicial experience—is that he has no track record whatsoever to show how he would separate his ideology from his interpretation of the law on the nation's second-highest court.

The Senate is scheduled to vote today on Myers' confirmation. According to their aides, Sen. Gordon Smith, R-Ore., probably will support the appointment, which is unfortunate, and Sen. Ron Wyden, D-Ore., will vote against it.

The Senate has confirmed more than 170 of Bush's judicial nominees, while blocking only seven. William Myers should be the eighth.

Ms. CANTWELL. Mr. President, Mr. Myers's embrace of judicial activism, combined with his anti-environmental record and a poor history of recognizing tribal rights, prevent me from offering my consent on this nomination.

I yield the floor.

Mr. HATCH. Mr. President, I rise today to rebut my colleagues' statements regarding our nominee William Myers. Some of these statements we have heard today are inaccurate and I would like to set the record straight.

Despite some accusations to the contrary, Myers has a proven record of defending Native American tribal interests in this country. For example, he defended the constitutionality of a provision of the California Constitution giving Indian tribes the exclusive right to conduct casino gaming in that State.

He also fought to uphold the Secretary of the Interior's decision to put a parcel of land located in Placer County, CA into trust for the United Auburn Indian Community. In addition, Myers supported legislation that vindicated the property rights of the Pueblo of Sandia, a federally recognized Indian tribe in central New Mexico, by creating the T'uf Shur Bien Preservation Trust Area within New Mexico's Cibola National Forest.

He also helped negotiate an agreement removing two dams from the Penobscot River in an effort to clear the way for the Penobscot Indian Nation to exercise its tribal fishing rights. Conservation groups and the Penobscot Indian Nation supported these efforts, and the agreement is now being implemented by the DOI's Boston field office.

And finally, with respect to tribal interests, Myers worked to implement an Indian Education Initiative that provided increased budget support to the Bureau of Indian Affairs schools, including over $200 million annually for school construction. This initiative emphasizes the teaching of tribal languages and cultures in addition to improving reading, math, and science education.

Some have also alleged that Myers demonstrated his hostility to environmental safeguards when he submitted a brief, on behalf of the North Dakota Farm Bureau, the American Farm Bureau and a similar group of clients, which challenged the Army Corps of Engineers' authority to regulate solid waste disposal into isolated wetlands. However, the U.S. Supreme Court agreed with his argument—pretty good evidence that the argument was both mainstream and stood on solid legal ground.

In fact, the U.S. Supreme Court agreed with Myers' clients that as a matter of statutory interpretation, the Clean Water Act did not authorize the Army Corps of Engineers to regulate the habitat of migratory birds in isolated, intrastate waters.

Myers' brief never contended that Congress lacks the ability to regulate wetlands under other statutes or provisions of the Constitution, e.g., under its spending clause powers. It simply argued that the Clean Water Act, as it existed in 1999, did not properly delegate such regulatory authority to the Army Corps of Engineers.

In his responses to Senator FEINSTEIN's written questions, Mr. Myers affirmed that Congressional intent in passing the Clean Water Act was to ''restore and maintain the chemical, physical and biological integrity of the Nation's waters,'' and that ''the health of our Nation's waters is often inextricably connected to the health of adjacent wetlands.''

As Myers stated at his hearing, the Clean Water Act is clearly constitutional, and there's no question that he understands its importance. And there's also no question that advocacy of a position accepted by a Supreme Court majority should be viewed as a positive point for a nominee, not a negative due to someone's personal disagreement with the decision in question.

I would also like to set the record straight regarding our nominee and an amicus brief he submitted on behalf of the National Cattlemen's Association to the U.S. Supreme Court in the 1995 Sweet Home v Babbitt case. Despite what my colleagues allege, this brief did not argue that the Endangered Species Act itself was unconstitutional.

The brief simply relied on the then-recent precedent of Dolan v City of Tigard, in which the Supreme Court stated:

> We see no reason why the Takings Clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment or the Fourth Amendment, should be relegated to the status of a poor relation in these comparable circumstances.

The problem that Mr. Myers' clients had with the Endangered Species Act was that Babbitt Interior Department regulations defined the term ''harm'' in the statute in a way that essentially precluded any private landowner's use of property on which an endangered species might find habitat, and, importantly, that the Government had no intention of compensating affected landowners.

In fact, the Endangered Species Act contains provisions that enable the

Secretary of the Interior to pay landowners to protect endangered species on their properties, while also preserving viable economic uses of the land. It's no surprise that the Babbitt Interior Department had no intention of enforcing those provisions of the law, but you can hardly blame ranchers and farmers adversely affected by Endangered Species Act regulations for hiring lawyers to ask the Supreme Court to remind the Interior Department of its obligations.

These provisions of the statute are, of course, in addition to the takings clause of the Fifth Amendment. Now, I understand that the Supreme Court ruled against Mr. Myers' clients' position in this case, but it seems to me that arguments well grounded in the plain language of the Constitution and the statute at issue, that acknowledged the basic validity of the statute, cannot credibly be tarred as ''extreme.''

By contrast, here is a situation that I think most people would agree is extreme. Last month, the Associated Press published an article entitled ''So Endangered It Didn't Exist,'' in, among other newspapers, the Daily Southtown of Illinois. The article reports that the LeSatz family of Chugwater, WY:

wants to be able to teach their clients the finer points of riding and roping without having to trailer their animals 25 miles to the nearest public indoor arena whenever the weather turns miserable. But the LeSatzes aren't able to build their own riding arena. The only decent site on their property in southeastern Wyoming lies within 300 feet of Chugwater Creek, and building there is far too expensive because of Endangered Species Act restrictions intended to protect the Preble's meadow jumping mouse.

The article then breaks it to the reader that the mouse doesn't exist:

After six years of regulations and restrictions that have cost builders, local governments and landowners on the western fringe of the Great Plains as much as $100 million . . . new research suggests the Preble's mouse in fact never existed. It instead seems to be genetically identical to one of its cousins, the Bear Lodge meadow jumping mouse, which is considered common enough not to need protection.

Now, the U.S. Fish and Wildlife Service is in the process of deciding whether or not these two species of mice are identical; if they are, then neither needs protection from the Endangered Species Act. And the consequences would positively affect many Western communities, in Montana, Wyoming, Colorado, and perhaps several other Western States. As a spokesman for the Colorado Contractors Association put it:

If we've shown that the mouse doesn't exist, what happens to all that has been set aside? Because that's been a huge economic burden.

Indeed it has. As the article reports, ''nearly 31,000 acres along streams in Colorado and Wyoming have been designated critical mouse habitat.'' The mouse ''also has blocked the construction of reservoirs amid a five year drought in the Rocky Mountains.''

Naturally, environmental groups have begun their usual attacks in hopes of preserving the potentially bogus classification of this mouse as endangered. But the quote from one of those groups' spokesmen in the AP article is instructive. Does it attack the science? Does it say, well, let's get to the bottom of this? No. It personally attacks the biologist who raised this issue with the U.S. Fish and Wildlife Service, as having ''a clear anti-Endangered Species Act agenda,'' and mocks him for ''testifying in Washington, D.C. in front of committees headed by members of Congress who would like nothing better than having the Endangered Species Act thrown away.'' I guess that, by this individual's logic, any time someone who doesn't share his policy agenda is chairing a Congressional committee, testimony before that committee is illegitimate. An interesting standard—I wonder if Bill Myers' liberal environmentalist opponents would like it applied to their detriment.

Now, the biologist referenced in this AP article may or may not prove to be right about this mouse; it's the Fish and Wildlife Service's job to figure that out. But here's the point: anyone who suggests that sound science ought to inform Endangered Species Act classifications—as Bill Myers did when he was representing folks like the LeSatzes, trying to make a living off the land, in this case, their own land—is attacked by the liberal activists as trying to throw the entire law into the garbage can. Sound familiar? It should. It sounds exactly like the kinds of personal attacks we're hearing on Bill Myers today, and it sounds like the attacks on any member of Congress who has the gall to suggest that the Endangered Species Act must be reformed. While now is not the time to debate the ESA, now should also not be the time to personally attack a qualified judicial nominee for having represented Westerners who have suffered because of its draconian applications.

Let me also remind my colleagues of Mr. Myers' acknowledgement at his hearing, that:

the Supreme Court, in interpreting the Takings Clause and the Fifth Amendment, has never interpreted it as an absolute. . . . [P]roperty rights are subject to reasonable regulation by government entities.

We all know this is the case—not only with the Takings Clause, by the way—and Mr. Myers has never suggested otherwise, despite the misrepresentations of his opponents.

I might note that I find it very unfortunate that the various Indian tribes that oppose Bill Myers have bought into the same false accusations about the Glamis Gold Mine issue.

The truth is Bill Myers was not involved in the permitting process for the proposed Glamis gold mine in southern California. He simply issued a Solicitor Opinion regarding the proper scope of the Interior Department's authority under the Federal Land Policy and Management Act, which allowed Glamis Gold, the owner of several mining claims in the area, to proceed with a pre-existing mining proposal. My colleagues should understand that the Babbitt Interior Department approved the same Glamis proposal—supported by two draft environmental impact statements in 1996 and 1997, and two separate Native American tribal cultural resource studies in 1991 and 1995—up until the last week of the Clinton Administration in January 2001.

At his hearing, Mr. Myers stated that:

my role in that matter was looking at a fairly narrow [legal] point and determining whether the Department had the congressional authority that it needed to make certain interpretations [of the FLPMA].

And his legal conclusion was that the Interior Department did not have the authority to do what former Secretary Babbitt's Solicitor said it did, regardless of the policy merits.

In response to Senator LEAHY's written questions, Mr. Myers explained that prior to his tenure as Solicitor.

Interior had suspended the 2000 regulations affecting hard rock mining. Those regulations were based in part on one of my predecessor's opinions. Multiple lawsuits regarding the suspended regulations were also pending when I arrived. I therefore felt an obligation to review the opinion that was common to these controversies to determine if the Department's defense to the lawsuits was viable.

In fact, Myers reached the legal conclusion that the regulations based on that opinion could not be credibly defended in Federal court.

Additionally, as his written responses to several other Senators' questions make clear, he reached that conclusion before he met with any mining industry representatives, and with the full awareness of the legal positions taken by the affected Indian tribes. Mr. Myers emphasized that:

representatives of the mining company were disappointed by their meeting with me because I would not engage them in a discussion of their ideas or views on the [hardrock mining] matter.

Finally, last spring, a Department of the Interior Inspector General report, concluded:

the conduct of the DOI officials involved in this [Glamis] matter was appropriate, that their decisions are supported by objective documentation and that no undue influence or conflict of interest affected the decision-making process related to the Imperial Project.

While a Federal district court judge here in D.C. disagreed with Myers' Opinion regarding mining operations on Federal lands, the judge upheld the Interior Department's regulations that were based on Myers' Opinion. As Bill noted in his responses to Senator FEINSTEIN's written questions, his opinion was consistent with the Carter administration's interpretation of the relevant portions of the FLPMA, and the D.C. judge agreed with Bill's Opinion's ultimate conclusion that the Bush administration's mining regulations would protect public lands from unnecessary and undue degradation.

Just once I would like to come here to vote on a nominee that some Democrats have maligned and misrepresented in order to make him or her ''controversial,'' and hear more than one Democrat say, well, we've actually reviewed the hearing transcript and the nominee's answers to written questions, and he or she really is a balanced, reasonable person who doesn't deserve the slander we've hurled at him or her. Maybe just once those Democrats prosecuting these filibusters will stray from the talking points and press releases of the inside-the-Beltway smear groups.

But I fear that day will be a long time in coming. Until then, and today in Bill Myers' case, all I can do is calmly point out facts and in particular, statements that the nominee has made to us that conclusively rebut the fevered allegations against him.

Mr. Myers' opponents have continually argued that since Bill Myers had publicly advocated his former clients' causes, which clash with their own policy preferences, he is presumptively disqualified from service on the Federal bench. But here is what he said in response to Senator SCHUMER's question regarding the Federal Government's role in environmental policy:

A centralized government, i.e., Congress, has an important role to play in environmental protection. And the Clean Water Act, the Clean Air Act—there are probably 70 environmental statutes that give evidence to that truth.

He further explained that much of his advocacy for ranchers against the Government was in response to the impact of environmental regulations on the generally good environmental stewardship of public lands by ranchers.

But, Mr. Myers explained in his responses to Senators' written questions that he has in fact represented ''clients who actively opposed use of federal land for oil and gas exploration and ranching,'' in one case because ''proposed oil and gas exploration conflicted with my client's use and enjoyment of . . . the land's aesthetic and ecosystem values.'' He also clarified that his lobbying on behalf of coal companies was limited to a piece of legislation supported by Bruce Babbitt's Interior Department.

In written questions, Mr. Myers was asked:

In private practice, have you ever represented an environmental organization or Indian tribe in litigation against the grazing or mining industry, or lobbied for environmental or Native American organizations on an issue or piece of legislation that was opposed by the mining or grazing industries?

And here's how he responded:

I have not represented environmental organizations in private practice. However, I have represented Native American tribal interests in pursuit of environmental matters unrelated to grazing or mining. In particular, I have represented tribal interests in securing water rights and damages for lost fishing rights. I have not lobbied for environmental or Native American organizations. While in private practice, I volunteered to chair a review commissioned by the State of Idaho regarding management of federal lands in Idaho. Environmental interests participated in that effort. Specific environmental groups were invited to join the group as full members but they declined to do so.

Mr. Myers also clarified that as Solicitor, he:

supported litigation and non-litigation activities restricting commercial use of public land for gold mining, ranching, off-shore oil and gas development, trespass in National Parks, expansion of national monuments, and protection of Indian sacred sites.

The question is, Do Mr. Myers' opponents care about his statements and the facts of the particular matters they hold against him, or had they made up their minds, well before he ever had an opportunity to respond to their concerns, and regardless of what he's actually said in sworn testimony? I think I know the answer, and it is a profoundly unsettling one.

I would also like to respond briefly to a falsehood recently circulated by a reliably liberal environmental group about Mr. Myers' October 2002 Solicitor Opinion, which addressed the Bureau of Land Management's authority to permanently retire grazing permits on Federal lands. The Opinion concluded that BLM does have the authority to retire permits at the request of a permittee, but only after compliance with statutory requirements and a BLM determination that the public lands associated with the permit should be used for purposes other than grazing. And BLM's decision to retire grazing permits is subject to reconsideration, modification or reversal.

Some found this Opinion controversial; some saw it as a shot across the bow against environmental activist groups that try to buy up grazing permits and then seek to retire them permanently, in order to shut ranchers off from those permitted areas. But at least in the case of a dispute over a portion of Utah's Grand Staircase-Escalante National Monument, a spokesman for the environmental group that sought to buy and retire grazing permits had this reaction to your Opinion:

What [Myers'] memo sets up is an acknowledgement of what we've already known . . . Once an area is closed to grazing, someone could still come along later and say ''we want to graze here'' and the BLM could reopen the area to grazing. . . . What people consider new about the memo is that plan amendments are not permanent. But that was not new to us.

I guess the extreme environmentalists opposition campaign didn't bother to read that quote, or Myers' Opinion.

In fact, the portion of the 1999 Tenth Circuit opinion in Public Lands Council v Babbitt that the U.S. Supreme Court did not review found that there is a presumption of grazing use within grazing districts, and that BLM could not unilaterally reverse this presumption. That finding supports the Opinion.

Let me also note that Myers' Opinion superseded a prior memorandum issued by former Secretary Babbitt's Solicitor on January 19, 2001, during the final hours of the Clinton Administration. That memorandum failed to consider a critical factor in any analysis of grazing permits under the Federal Taylor Grazing Act, namely, that the Secretary of the Interior has deemed lands within existing grazing districts ''chiefly valuable for grazing and the raising of forage crops.''

Now, the environmental group that's propagating the misrepresentations about this Solicitor Opinion also speculates that, if Myers' ''authority also extended to the national forests,'' then groups that try to buy up land to preclude all subsequent economic uses of it wouldn't be able to duplicate the ''success story'' of wolf and grizzly bear reintroduction in Wyoming and Montana. It is hard to know where to start dismantling this absurd statement. First, as the record will now show, the relevant Solicitor Opinion does not, in any way, stop willing buyers of land from buying land from a willing seller—but the Federal Taylor Act must be respected in the process. Second, as a Federal appellate judge, Bill Myers, at his most powerful, would be on a panel of three judges. Given the overwhelming number of liberals on the Ninth Circuit, the odds are that he would be routinely outvoted.

The third and perhaps most telling, only a liberal environmental group believes that grizzly bear and wolf reintroduction in the West has been a ''success.'' The verdict of the many farmers and ranchers, inside and outside of the Ninth Circuit, who have lost their livestock and livelihoods to these federally subsidized and protected predators is quite different. And it is Bill Myers' understanding of both sides of these types of issues that makes it absolutely essential that he be confirmed as a Ninth Circuit judge.

I would like to point out that at the Judiciary Committee markup on April 1, 2004, Bill Myers was unfairly characterized by one of my colleagues as ''a man who has contempt for the views, the well-believed and cherished views of others,'' based on a couple of quotes, lifted out of context, from several advocacy articles he wrote on behalf of his clients: ranchers and farmers.

I thought I might read you a few quotes, not lifted out of context, from some of the many activist groups who have fomented much of the baseless opposition to Myers' nomination. Judge for yourselves whether this rhetoric fits the Senator's definition of contempt for the views of others, but I think it's crystal clear that what Myers' opponents would like to do is demonize him as a way to silence the opposition to their own favorite purveyors of contempt.

Here are a few choice quotes from a document posted by a coalition of several liberal environmental groups, all of which have vilified Bill Myers as an ''extremist,'' in April 2002:

One of the most nefarious strategies used by the Bush Administration and its industry

allies to undermine environmental protections is to set policy by failing to defend against industry lawsuits or by reaching ''sweetheart'' settlements with industry.

Among the top contributors to the 2000 Bush Presidential Campaign were the very industries oil—and gas, logging, ranching and large-scale real estate development—that stand to benefit most from the weakening of federal wildlife policy. The court cases discussed above [regarding the Endangered Species Act] were virtually all filed by developers, ranchers and loggers, so it is clear that these industries have already benefited from their generosity to the campaign and their otherwise close ties with the Bush Administration. The oil and gas industry similarly has enjoyed favored treatment, even when its activities would despoil some of the most important remaining habitats of imperiled species.

Unfortunately, in the current Administration, science is often shortchanged when it gets in the way of favored corporate interests. Secretary Norton's Interior Department has repeatedly suppressed, distorted or scuttled the science, even when it comes from biologists within the Department.

Let's see if I've got this straight. The entire Bush administration is nefarious, corrupt, and bribed by corporate interests. Secretary Norton distorts science to benefit the administration's corporate contributors. But it's Bill Myers who is contemptible and ''extreme'' because he dared suggest that frivolous environmental lawsuits are increasing?

I think everyone ought to be honest about what's going on here. Groups like this, which I'm sure many Democrats would defend as ''mainstream,'' and whose bidding Senators will be doing by refusing to vote on Bill Myers, are the ones spewing contempt.

I would like to respond to some of the rhetoric about Bill Myers' record as Solicitor at the Department of the Interior, a position to which this Senate confirmed him without opposition in 2001.

I understand that Mr. Myers's opponents believe that association with the Bush/Norton Interior Department is a disqualifier for service on the Federal bench I wonder if they will mind when such a standard is applied to the detriment of officials from the Clinton/Babbitt Interior Department, or any future Democratic administration, who might be nominated to the Federal bench. Regardless, let me point out just one example of where the Bush Interior Department clearly got a policy issue right, an issue on which Bill Myers himself has been extensively criticized.

The issue was decided just last month in the case of *Southern Utah Wilderness Alliance* [124 S. Ct. 2373 (2004)]: The Bush Interior Department's position in this case, for which Bill Myers laid the legal foundation, was upheld by a unanimous Supreme Court. The Court rejected environmental activists' challenges to a land use plan that was duly issued under authority of the Federal Land Policy and Management Act. The Court endorsed the Interior Department's ''multiple use management'' concept, describing it as ''a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put. . . .'' The Court also held that while a ruling in favor of the environmental activists:

might please them in the present case, it would ultimately operate to the detriment of sound environmental management. Its predictable consequence would be much vaguer plans from BLM in the future—making coordination with other agencies more difficult, and depriving the public of important information concerning the agency's long range intentions.

The fact that Bill Myers defended such policies cannot, in a rational confirmation process, disqualify him from service on the Federal bench. In fact, the endorsement of multiple use management policies by a unanimous Supreme Court in this case is compelling evidence against the absurd allegations that Bill Myers is somehow ''out of the mainstream'' with respect to public lands and environmental law.

I would also like to address a point raised earlier about some statements that Bill Myers made in articles that he wrote on behalf of his clients—cattlemen, ranchers and farmers who opposed Federal Government mismanagement of public lands.

In a July 1, 2004 article entitled ''Ronald Reagan, Sagebrush Rebel, Rest in Peace,'' William Pendley of the Mountain States Legal Foundation wrote: ''I am, former Governor Ronald Reagan proclaimed in 1980, 'a Sagebrush Rebel.' ''

Now, at his hearing, Bill Myers was attacked merely for having used this same term, in an advocacy piece he wrote for his farming and ranching clients. In fact, he was mocked at this hearing, and after it, for merely channeling the concerns of his clients, who, like Ronald Reagan, considered themselves ''Sagebrush Rebels.''

Mr. Pendley's article goes on:

When Ronald Reagan was sworn in, he became the first president since the birth of the modern environmental movement a decade before to have seen, first hand, the impact of excessive federal environmental regulation on the ability of state governments to perform their constitutional functions; of local governments to sustain healthy economies; and of private citizens to use their own property. . . . Reagan thought federal agencies in the West should be ''good neighbors.'' Therefore, Reagan returned control of western water rights to the states, where they had been from the time gold was panned in California until Jimmy Carter took office. Reagan sought to ensure that Western states received the lands that they had been guaranteed when they entered the Union. Reagan responded to the desire of western governors that the people of their states be made a part of the environmental equation by being included in federal land use planning.

I would also like to note that Reagan criticized ''excessive'' regulation, not any regulation at all—neither Bill Myers nor anyone else thinks there is no role for the Federal Government in environmental regulation. And Bill Myers emphasized this at his hearing, in response to very hostile questioning by Democratic Senators:

A centralized government—i.e. Congress—has an important role to play in environmental protection. And the Clean Water Act, the Clean Air Act—there are probably 70 environmental statutes that give evidence to that truth.

But the Reagan approach, which is also the Bush Interior Department's approach, which Bill Myers did his best to defend, is inimical to the environmental activist groups that oppose Mr. Myers' nomination. Any attempt to give the people who actually make their living on and around Western lands a stake in how those lands are regulated is violently opposed by these groups. And then these groups label their enemies ''enemies of the environment,'' or ''friends of polluters.'' It is unfortunate that such labels are uncritically accepted by some Senators, and because these liberal groups have similarly labeled Bill Myers, he won't get the up or down vote he deserves.

## RECESS

The ACTING PRESIDENT pro tempore. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:32 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. ALEXANDER).

## EXECUTIVE SESSION

### NOMINATION OF WILLIAM GERRY MYERS III TO BE A UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT—Continued

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 603, William Gerry Myers III of Idaho, to be U.S. circuit judge for the Ninth Circuit.

Bill Frist, Orrin Hatch, Christopher Bond, Chuck Hagel, Ted Stevens, John Cornyn, Wayne Allard, Lindsey Graham, Sam Brownback, Gordon Smith, Lisa Murkowski, Lamar Alexander, Robert Bennett, Elizabeth Dole, Don Nickles, James Inhofe, and Conrad Burns.

The PRESIDING OFFICER. By unanimous consent the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of William Gerry Myers III to be U.S. circuit judge for the Ninth Circuit shall be brought to a close?

The yeas are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Georgia (Mr. MILLER) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The yeas and nays resulted—yeas 53, nays 44, as follows:

[Rollcall Vote No. 158 Ex.]

YEAS—53

| | | |
|---|---|---|
| Alexander | DeWine | McConnell |
| Allard | Dole | Murkowski |
| Allen | Domenici | Nelson (NE) |
| Bennett | Ensign | Nickles |
| Biden | Enzi | Roberts |
| Bond | Fitzgerald | Santorum |
| Brownback | Frist | Sessions |
| Bunning | Graham (SC) | Shelby |
| Burns | Grassley | Smith |
| Campbell | Gregg | Snowe |
| Chafee | Hagel | Specter |
| Chambliss | Hatch | Stevens |
| Cochran | Hutchison | Sununu |
| Coleman | Inhofe | Talent |
| Collins | Kyl | Thomas |
| Cornyn | Lott | Voinovich |
| Craig | Lugar | Warner |
| Crapo | McCain | |

NAYS—44

| | | |
|---|---|---|
| Akaka | Dorgan | Levin |
| Baucus | Durbin | Lieberman |
| Bayh | Feingold | Lincoln |
| Bingaman | Feinstein | Mikulski |
| Boxer | Graham (FL) | Murray |
| Breaux | Harkin | Nelson (FL) |
| Byrd | Hollings | Pryor |
| Cantwell | Inouye | Reed |
| Carper | Jeffords | Reid |
| Clinton | Johnson | Rockefeller |
| Conrad | Kennedy | Sarbanes |
| Corzine | Kohl | Schumer |
| Daschle | Landrieu | Stabenow |
| Dayton | Lautenberg | Wyden |
| Dodd | Leahy | |

NOT VOTING—3

| | | |
|---|---|---|
| Edwards | Kerry | Miller |

The PRESIDING OFFICER. On this question, the yeas are 53, the nays are 44. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. MCCONNELL. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## LEGISLATION SESSION

## UNITED STATES-MOROCCO FREE TRADE AGREEMENT IMPLEMENTATION ACT

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate now resume legislative session and that the Senate proceed to the consideration of S. 2677, the Morocco free-trade legislation, as provided under the statute.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. REID. We, of course, have no objection to this request. Senator BAUCUS will be the manager on our side. At some subsequent time, we will make a decision as to how much of the 10 hours we will use. We will report that through our manager to the chairman of the committee at the earliest possible time.

The PRESIDING OFFICER. Without objection, the requests are agreed to.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2677) to implement the United States-Morocco Free Trade Agreement.

Mr. GRASSLEY. Mr. President, I thank the distinguished assistant minority leader for his approval of going ahead on this issue. I thank every Senator on the other side because any Senator on the other side or, for that matter, this side can object to any legislation coming up. Trade legislation is a little more controversial than it used to be. We have had great cooperation from the Democrats in the bipartisan manner it takes to get business done in the Senate on three very important trade agreements, including now this one, the United States-Morocco Free Trade Agreement. Last week we did the United States-Australia Free Trade Agreement, and prior to that the extension and reauthorization of the African Growth and Opportunity Act, which was passed just prior to our previous recess for the Fourth of July.

So often in this body the antagonism gets highlighted between Republican and Democrats. I wish to thank all the minority Members for allowing me to move ahead with this legislation.

Obviously, since I presented this legislation, I support this bill, S. 2677. It is legislation that implements the United States-Morocco Free Trade Agreement. I happen to believe this agreement marks a solid win for America, and when it comes to trade legislation, when we talk about a solid win, that is in economic terms and that creates jobs in America because America produces, in most instances, more than we can consume, particularly in agriculture but in other areas as well.

The United States is 5 percent of the world's population. So if anybody thinks we should not accept goods from overseas and then other countries not let us export, understand that 5 percent of the people of this world, the Americans, when we produce much more than we consume—and in agriculture that is 40 percent—what they would be saying is that we ought to shut down part of productive America. Obviously, if we shut down part of productive America, we lose jobs. So if we are going to keep enhancing our economy, to increase our standard of living—and that is related to increased productivity—then, obviously, we have to look to the 95 percent of the people of the world who are outside the United States as a market.

Other countries, obviously, look to the world for a market. So it is a very competitive market. But the extent to which we reduce trade barriers—and this Morocco agreement is one example of reducing barriers to trade—then we let the marketplace make a decision on where goods go, what goods cost, and the quality of goods. For the most part, consumers of those respective countries, including America, make a determination as to what they want to pay and the quality of product they want. But the marketplace is going to be making that decision.

When we have barriers to trade that are set up by governments, then political leaders are making those decisions. Or if it is not political leaders, it is government employees making those decisions. Quite frankly, when government makes decisions, you do not reap the benefits of the efficiency of the marketplace and the efficiency of productivity of the respective workers of the respective countries that you do if the marketplace is making those decisions.

Willing buyer, willing seller, setting price, setting quality, setting time of transaction is better than 535 Members of Congress making that decision. All one has to do is look at Russia today. It is much more productive than it was when bureaucrats in Moscow were deciding how many acres of wheat to plant and when to combine those acres, the mature crop. A third of it was left in the field because when 5 o'clock came, they went home. When the American farmer goes out to harvest crops, he stays there until he gets it done, particularly something that is time sensitive, such as the maturing crop of wheat or soybeans. But not the Russian farmer under the Soviet system of command and control. Russia was not exporting grain. Today, Russia is exporting grain. We have to go back to the new economic program of the late 1920s for that to have happened, or you have to go back to the days of the czar for that to have happened in Russia.

So the marketplace is the best place to make these decisions, and agreements leveling the playing field, such as this Morocco agreement, are examples of the United States looking to the rest of the world to sell the surplus we manufacture, the surplus we produce, the excess—if you do not want to call it surplus, it is excess—of what we can consume here.

When this agreement is implemented, more than 95 percent of bilateral trade will become duty free immediately. According to the Office of the U.S. Trade Representative, this is the best market access package of any U.S. free-trade agreement with a developing country. This will bring important new opportunities for America's manufacturing sector. The agreement will also benefit our service providers with new market opportunities, particularly in key sectors such as engineering, telecommunications, banking, and insurance. U.S. intellectual property rights owners will obtain the benefits of

stronger protection for their trademarks, for their copyrights, and for their patents.

Any agreement will lead to a more open and transparent trading regime with the implementation of the new transparency procedures for customs administration, new commitments to combat bribery, and strong protections for U.S. investors in the region.

Perhaps most importantly for my home State of Iowa, the agreement brings substantial benefits to the U.S. agricultural community. I note firstly that the agreement is comprehensive. No sector is excluded. This is important for the future of our U.S. agriculture. The fact is, when we take a sector off the table during negotiations, our trading partners are bound to do the same. All too often the sector they want excluded is one of our most competitive agricultural products. That means lost sales for America's family farmers.

It is very important that we send a strong message to our future trading partners that our country, the United States of America, remains committed to negotiating broad and very comprehensive free-trade agreements. Passage of this agreement moves that ball closer to the goalpost and reaffirms our commitment to negotiating and not being on the sideline.

Second, this agreement is sure to advance our agricultural exports in an important and growing region of the market. The recent trend of Argentine and Brazilian corn displacing American corn in the Moroccan market will end. In fact, the International Trade Commission predicts that absent the current tariff, United States corn producers will supply nearly all of Morocco's corn imports in the coming years.

The International Trade Commission also estimates that United States exports of soybean meal to Morocco will likely increase substantially under this agreement. With Morocco presently imposing tariffs as high as, believe this, 275 percent on the import of United States beef, the United States is in effect literally shut out of the Moroccan beef market. This will change under this agreement, with the United States gaining new access for our beef going into Morocco.

United States exporters are currently at a competitive disadvantage when they try to sell wheat to Morocco. The fact is that competitors of the United States can sell their wheat cheaper. This agreement will change that. This agreement will level the playing field for America's wheat farmers. It is also going to do it for our beef ranchers.

An independent study by the American Farm Bureau Federation found that under this agreement—now, this is the American Farm Bureau—the United States agricultural trade surplus with Morocco could reach $382 million by 2015 with Moroccan agricultural exports rising by only $25 million. Thus, under this agreement, U.S. agriculture would see roughly a 10-to-1 gain. Those figures speak louder than words.

I have received testimony and letters in support of this agreement from across America's agricultural sector. I concentrate on what we have heard from one Iowa farmer, but also a person who is very much a leader in the Iowa Soybean Association, Ron Heck from Perry, IA. He testified before the Finance Committee, which I chair, that the agreement will not only benefit soybean farmers directly in increased exports to the country of Morocco but also indirectly as they sell their grain to America's beef and poultry farmers who will in turn export these products of beef and poultry to Morocco.

When one sells meat, one sells a value-added agricultural product that has created more jobs in America. It is better to sell the beef and the poultry, it brings more wealth to America than sending our raw grain and our raw soybeans overseas.

We have the National Corn Growers Association, the International Dairy Food Association, the National Milk Producers Federation, the National Cattlemen's Beef Association, the National Association of Wheat Growers, the National Chicken Council, the Corn Refiners, and the USA Rice Federation, to name a few, that have all written to me in favor of this agreement.

The Morocco free trade agreement also contains a preference clause that grants the United States market access provisions that will be at least as good as those granted by Morocco to other countries in any future free trade agreement they may enter into.

Finally, the agreement enabled us to tackle tough sanitary and phytosanitary issues which had been acting as a bar to many of our agricultural exports.

In my mind, the economic benefits are enough for any Senator to support this agreement. I think my colleagues ought to take into consideration other less tangible reasons to cast their vote as yea.

Morocco is a longstanding friend and ally of the United States. In fact, Morocco was the first country to extend diplomatic relations to the United States following our independence. Our two nations first signed a treaty of peace and friendship in 1786, making this the oldest unbroken treaty in the history of the United States foreign relations.

Today, Morocco is a valuable ally in the war against terrorism, working with our country to bring peace and stability throughout the Middle East. In short, Morocco has been and still remains a valued friend of our country. I am pleased we will be able to strengthen our friendship with the passage of this free trade agreement.

The Morocco free trade agreement marks our third free trade agreement in the Middle East. Although we enjoy strong free trade agreements with Israel and Jordan, the Congress may soon have an opportunity to consider a fourth free trade agreement with Bahrain, another important Middle Eastern country and one that is very helpful to us in a military way.

While each free trade agreement is valued in and of itself, these free trade agreements are also steppingstones toward President Bush's broader vision of a Middle East free trade agreement by the year 2013. Today, far too many people in the Middle East are plagued by poverty and lack of education and opportunity. While trade itself will not alleviate every ill, it is a vital tool of development which has been lacking for far too long in that important region of the world. I am confident the passage of this free trade agreement, along with our continued efforts to build a Middle East free trade agreement, can help change that by ushering in a new era of hope and prosperity in that critical part of the world.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CRAPO). Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I rise in support of the legislation to implement the U.S.-Morocco free trade agreement. By voting to approve the Morocco implementing legislation, we can confirm our close and longstanding ties with Morocco.

In 1777, soon after a breakaway British colony calling itself the United States of America declared independence from Britain, Morocco was the first country in the world to recognize the new government.

In 1787, the two nations negotiated a Treaty of Peace and Friendship that is still in force, representing the longest unbroken treaty relationship in U.S. history.

Soon thereafter, Morocco's rule wrote to President Washington to ask for help in protecting Morocco's shipping fleet from marauding bandits.

Washington wrote back, apologizing that the United States was too poor and too weak from the recent American Revolution to help Morocco. But Washington said that perhaps someday, the United States would be strong enough to help its friends. For Morocco, that day has now come.

So there are strong foreign policy reasons to vote for the Morocco implementing legislation. But I have often said that foreign policy concerns alone should not control our trade policy. I have argued that we should negotiate free trade agreements with countries that offer real economic advantages for U.S. farmers, workers, and businesses.

I am happy to report that while Morocco has a relatively small economy, the agreement with Morocco is a

strong agreement that offers significant opportunities for American exporters. In many ways, it sets a new standard for U.S. free trade agreements with developing countries.

Take, for instance, the provisions regarding intellectual property. Morocco has agreed to a high level of protection for intellectual property rights. The agreement includes state-of-the-art protections for digital copyrights and trademarks, expands protection for patents, and mandates tough penalties for piracy and counterfeiting.

Morocco has also agreed to the best market access package to date of any U.S. free trade agreement with a developing country.

Over 95 percent of our trade with Morocco in consumer and industrial products will become duty-free immediately upon the entry into force of the agreement. All remaining tariffs will be eliminated within 9 years.

The agreement is also good for U.S. agricultural producers. Wheat was a sensitive issue for the Moroccan negotiators. They initially resisted attempts to increase access to U.S. wheat exports. Morocco purchased most of the wheat it needed to import from the European Union. They did not want to open it up to America, but I fought hard to ensure that U.S. wheat producers would not be left out of the agreement. I made it clear that I could not—and would not—support any agreement with Morocco that excluded wheat. Wheat is an important export crop for many U.S. States, including my home State of Montana.

In the end, Morocco agreed to open up its market to U.S. wheat. The agreement creates new tariff rate quotas for wheat that could lead to a 5-fold increase in U.S. exports to Morocco. Most importantly, it will allow U.S. wheat producers to compete in Morocco on a level playing field with their European competitors.

Beef was another sensitive issue for Moroccans. Again, I made clear how important beef exports were to me and to others in the Congress. In the end, the agreement gives U.S. beef producers new access to Morocco for their high-quality beef exports.

The agreement is good for the United States, but it is also good for Morocco. It will help update and modernize Morocco's economy and attract investment to Morocco.

Morocco has used the free trade agreement negotiations to consolidate significant domestic reforms. For example Morocco recently enacted a new labor law and a new law on child labor, both of which were drafted with the help of the International Labor Organization.

Also, during the course of the negotiations, Morocco agreed to accede to the World Trade Organization Agreement on the Expansion of Trade in Information Technology.

As a result, Morocco recently eliminated tariffs on a number of information technology products. That could help increase Morocco's productivity as Moroccan businesspeople gain easier access to high-tech products.

By voting to approve Morocco implementing legislation, we can support reformers in Morocco who seek to modernize its economy. We can also send a signal to other developing countries with reform-minded governments that opening up their economies can lead to closer economic relations with the United States and new opportunities for their citizens.

I urge my colleagues to support this legislation.

Before I conclude, I would like to take a moment to thank my good friend, the chairman of the committee, Senator CHARLES GRASSLEY, for his leadership not only on this legislation but on every piece of legislation we have dealt with in this Congress. The chairman and I have worked with other members of the Finance Committee to address their concerns. I must say, there were several on this implementing legislation with Morocco. We worked with those Senators, with their concerns. I compliment the chairman for his leadership in working all that out, and I believe he has successfully addressed all those concerns.

I appreciate the willingness of the members of the committee to work cooperatively to get this legislation done in a timely manner.

I yield the floor, I suggest the absence of a quorum, and ask unanimous consent that time under the quorum call be charged equally against both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CHAFEE). Without objection, it is so ordered.

Mr. DORGAN. Mr. President, I yield myself such time as I may consume.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, I was thinking about speaking about trade but I nearly wore out my welcome last week on that subject so I will only say that I would much prefer a trade bill be brought to the Senate floor that solves problems rather than creates new problems. I do not know that a trade agreement with Morocco is going to cause new problems but I do know that in trade agreement after trade agreement over a good many years, we have caused more problems, none of which ever get fixed. The problems of trade with Europe, with Japan, with Korea, with Mexico, with Canada never get fixed. Again, I do not know that this will cause problems with respect to Morocco. Morocco is one of those few countries with which we have a trade surplus.

But it has been the case that in every circumstance where we negotiated a trade agreement the surpluses that existed soon turned into deficits. In fact, we have the largest trade deficit in human history right now and that trade deficit exists with China, well over $130 billion a year; we have a trade deficit with Japan, Europe, Korea, and more. The NAFTA agreement was supposed to create a massive number of new jobs, hundreds of thousands of new jobs in this country, yet following the NAFTA agreement with Mexico and Canada we, in fact, turned a small trade surplus we had with Mexico into a very large deficit and we turned a modest deficit that we had with Canada into a very large trade balance deficit.

I do not intend to give a lengthy speech about trade today and repeat what I have talked about before, the outsourcing of American jobs, the movement of jobs from this country to other countries that is going on in a wholesale capacity. I will mention just a couple of issues, as examples of broken promises in trade. With respect to Mexico, we were told that we would see the products being imported into this country from Mexico, being the product of low-skill, low-wage labor. In fact, that is not the case at all.

The three largest imports into this country from Mexico are automobiles, automobile parts, and electronics, the products of high-skill, high-wage labor except they do not pay high wages in Mexico. That is why these jobs have moved to Mexico.

I was told, although I have not yet checked this, that we now perversely import more automobiles from Mexico into the United States than we export to all of the rest of the world. This is after we did a trade agreement with Mexico.

I could spend time talking about our trade agreements with China, Japan, Europe, and others, and it is the same result.

Now, especially during the Olympic trials, our negotiators really ought to be required to wear jerseys so they can look down and see, as the Olympic athletes do, ''USA'' so at least they know for whom they work.

It is not very easy, in my judgment, to see the result of their work and understand whose side they were on when they negotiated these agreements.

I mentioned last week the recent agreement that was negotiated with China. In the agreement between the United States and China, we agreed the Chinese could impose a 25-percent tariff on any automobiles the United States ships to China and that we would impose a 2.5-percent tariff on any Chinese automobiles they would aspire to sell in our marketplace. In other words, our negotiator agreed that, with a country with which we have a $100-plus billion deficit, we would allow them to put a tariff on automobiles that would be 10 times higher than the tariff we would impose on Chinese automobiles to be sold in our country.

I say to you, that is incompetent. I have no idea how that happens; how someone rationalizes that this is fair.

What does it mean to average folks? It means jobs lost. It means jobs are created there rather than here. It means jobs leave here to go there. It means outsourcing. In most cases, it is why I do not support these trade agreements. Those who negotiated the agreements did not decide to stand up for the economic interests of our country. I am not talking about protectionism, I am talking about standing up for our economic interests and requiring and demanding fair trade.

It was one thing post the Second World War to be able to have concessionary trade policies, to say to other countries: Look, we will be glad to provide some concessions because we are bigger than you are, we are stronger, we are more capable, we have a thriving, growing economy and we can beat almost anyone in economic competition with one hand tied behind our back. That wasn't a big problem then. But things have changed. We now face stiff, shrewd, international competitors, yet most of our trade policy is still softheaded foreign policy, and those who negotiate it don't stand up for the economic interests of this country, in my judgment.

So much for trade.

I did want to mention a couple of other items, if I might.

TAX SHELTERS

The Washington Post did a story which described something most of us now have known is occurring. The U.S. Treasury Department has tapped a private company called KPMG, one of the largest accounting companies, perhaps the largest in our country, to audit the Treasury Department's consolidated financial statements. These are audits that were done previously by Government folks. These are internal audits by the Inspector General's office or others. But now they have tapped this company to audit the Treasury Department's financial statements.

Interestingly enough, the company they have hired to do that down at the Treasury Department is the subject of a Federal grand jury probe into its tax shelter abuses. By tax shelter abuses I mean this is a company that by all accounts now was aggressively marketing tax shelter abuses to clients and refuses to provide to the Treasury Department names of its clients so we can find out who avoided paying taxes by using the aggressive tax shelters proposed by this company. The Treasury Department says: On the one hand, we are investigating you with a grand jury probe. On the other hand, let's give you a big contract.

I don't understand that. I don't understand it at all. Why on Earth would the Treasury Department do this?

This aggressive marketing of tax dodges to those who want to avoid paying taxes is pretty difficult for the Treasury Department to get at. They have a difficult time trying to shut these down, these aggressive tax shelters. Because of the marketing of aggressive and abusive tax shelters, more and more companies have decided I want to be an American company for purposes of doing business in America and calling myself American, but I don't want to be an American company when it comes to paying taxes. Then I want to call myself a citizen of the Bahamas, or the Cayman Islands, or the Dutch Antilles. I want to run my company through a mailbox. I want to rent a mailbox in one of these countries that sets themselves up as a tax haven, and I want to run my company through a mailbox. Why? Not because that is where the company is going to be run from. It is because they want to avoid paying U.S. taxes.

Some companies—not too many, but some—have gone the extra step of deciding to dump their U.S. citizenship, renounce their U.S. citizenship and become citizens of other countries.

These corporations are given life as an artificial person. A corporation isn't a real person, but we, in law in this country, have decided to create artificial persons. It is called a corporation. They can sue and be sued, contract and be contracted with. They, by a charter granted them in this country—in most cases by the State of Delaware but in other places as well—become an artificial citizen of the U.S. They do business. With a corporation, they limit liability and they are able to accumulate capital. It has been good for this system of ours, the capitalistic system, the free enterprise system. It has been good.

Except now this is what we are saying to companies such as KPMG, that are marketing aggressive tax shelters to these other companies, American companies who want to remain American companies and want to do everything but pay taxes to our country. We have the largest Federal budget deficit in history and we have companies trying to avoid paying taxes right and left and we have a big company that was advising them on how to avoid paying their taxes and in some cases creating abusive and aggressive tax shelters, and the Treasury Department says: Oh, by the way, I know we are investigating you in a grand jury probe, but on the other hand, let us help you out with a big, fat contract.

I don't understand who makes these decisions, but I don't think it is a decision that makes sense for the taxpayers of this country. I don't like the signal it sends. I don't know this company. I am not involved with the people involved in this company. It is not about this being personal. It seems to me, if a company, in order to curry favor with its clients, decides it wants to market aggressive and abusive tax shelters, it has to bear the responsibility for having done that. Part of the responsibility is not, in my judgment, bringing down a big, old contract on the positive side of the ledger, to now audit the Department of the Federal Treasury.

Let me say, while I am at this, Senator GRASSLEY and Senator BAUCUS have made statements about this which I think are very admirable. I could read some of them. I think the statements about this by both the chairman and the ranking member of the Finance Committee are right on target. Senator GRASSLEY says:

> If we could just get Federal agencies not to work at cross purposes it would go a long way towards ensuring everybody pays their fair share of taxes.

Senator BAUCUS launched a probe into the Department of Interior's planned acquisition of mineral rights from a seller who wanted to claim a big charitable deduction. That is the same thing.

These companies marketing these strategies these days, they even have now in this country something a lot of people would find strange, subway systems and city hall being sold to the private sector in a leaseback. You actually sell it and then lease it back so the private company can get tax benefits from a building that was owned by the Federal Government or State government or local government—in most cases it is State or local government—and it is kind of a golden handshake where a building that would not be depreciated, because the government wouldn't depreciate it, sells the building to a private business and then leases it back so the private company can actually collect more in tax benefits than it lays out to the government in the first place. It is a big tax dodge. It doesn't make any sense at all.

At a time when we have a giant Federal budget deficit, trying to figure out how we make enterprises pay their fair share and people pay their fair share, the ordinary folks, the folks who go to work every day and try to do the best they can, at the end of the year file a tax return on April 15 and pay their fair share, they look at this and say I don't understand that. A company that makes $500 million pays zero or next to zero, companies that make billions of dollars end up claiming these tax dodges.

Let me commend Senator GRASSLEY and Senator BAUCUS and encourage them and say, as one Member of the Senate, I hope you will be as aggressive as possible to try to shut this down because this makes no sense at all.

SECRET AIRPLANE FLIGHTS AFTER 9/11

Mr. DORGAN. Mr. President, I want to mention one other issue, one that I think very few people are paying as much attention to as they should, especially in the press.

I believe my colleague from New Jersey has discussed it on the Senate floor, it was discussed recently in a Commerce Committee hearing, and I have discussed it in many venues—the question of something that happened which was curious and very worrisome to me in the days following September 11, 2001. Let me describe what it was. We have all read snippets about it, and some of them are not accurate.

In the days following 9/11, there were six secret charter flights that were allowed to leave this country. They gathered up 142 Saudi nationals that were in the United States. They gathered up those Saudis, which included over two dozen members of the bin Laden family, and got them to a few gathering points, and on six secret charter flights they left this country. The public did not know they were leaving. The public did not know that these flights were occurring until after they left our country.

There have been a lot of questions about this issue. Let me describe some of what is in the public record.

Fifteen of the 19 terrorists who struck this country on September 11, 2001, were Saudi citizens. So who would have allowed the gathering up of 142 Saudi citizens to be put on 6 secret charter airplane flights to leave this country?

On September 3, 2003, Richard Clarke, head of counterterrorism in the White House at the National Security Council, said this before the Senate Judiciary Committee. He addressed this question:

It's true that members of the bin Laden family were among those who left.

That is part of the 142 Saudis who left on the 6 secret flights.

It is true that members of the bin Laden family were among those who left. We knew at the time—I can't say much more in open session—but it was a conscious decision with complete review at the highest levels of the State Department and the FBI and the White House.

That is Richard Clarke testifying before the Senate Judiciary Committee when asked about who allowed these secret flights. He said: Well, we knew about it. I can't tell you much more in open session, but it was a conscious decision with complete review at the highest levels of the State Department and the FBI and the White House.

Then Richard Clarke—the same Richard Clarke—appeared under oath in March 2004 at the 9/11 Commission. Here is what he said about who sought these secret charter flights:

I'd love to be able to tell you who did it, who brought this proposal to me, but I do not know. The two possibilities that are the most likely are either the Department of State or the White House Chief of Staff's office.

That is what he told the 9/11 Commission when asked who proposed these secret flights to be allowed to leave. He said: I do not know. The two possibilities are the Department of State or the White House Chief of Staff's office.

In the same testimony before the 9/11 Commission, Mr. Clark testified with respect to the secret flights, and the request that the flights be approved:

I suggested that it be routed to the FBI, and the FBI looked at the names of individuals who were going to be on the passenger manifest and that they approve it or not. I spoke with at the time the No. 2 person at the FBI, Dale Watson, and asked him to deal with this issue. The FBI then approved the flight.

That is Richard Clarke, a direct quote under oath to the 9/11 Commission.

The FBI spokesperson, speaking of these charter flights with the Saudis and the bin Laden family members, said:

We haven't had anything to do with arranging or clearing the flights.

Then the FBI said no one was allowed to depart ''who the FBI wanted to interview in connection with the 9/11 attacks.''

That is what the FBI said. No one was allowed to leave who the FBI wanted to interview in connection with the 9/11 attacks.

However, Dale Watson, the No. 2 person at the FBI, head of counterterrorism at the time of these flights, said that the FBI did not conduct in-depth checks on the Saudis being repatriated.

He said:

They were identified but they were not subject to serious interviews or interrogation.

What we now know, according to the 9/11 Commission, is that about 30 of the 142 Saudis who were allowed to leave were interviewed by the FBI. But the No. 2 person at the FBI said none of them were subject to interviews or interrogation.

Among those who were allowed to leave this country, the Saudis—and I will not use their names; though I may have used them before—was a cousin of Osama bin Laden who had run the U.S. operations of a charity that had been accused of financing terrorism by the Governments of India, Pakistan, the Philippines, and Bosnia. The FBI had investigated this person dating back to 1996. His case file was reopened on September 19, 2001, even as these flights were in progress.

Another individual was allowed to leave. He, it turns out, curiously, was in the same hotel as three of the hijackers the night before September 11, 2001. He was a former director of a Saudi charity that has been investigated for ties to terrorism. He was interviewed by the FBI shortly after 9/11, but the interview was cut short when he pretended to be ill. The FBI agent recommended that he should not be allowed to leave until a followup interview could occur. That recommendation was not complied with, and he was allowed to return to Saudi Arabia without a followup interview.

The interesting thing about the 9/11 Commission report is what they say about this flight and these citizens. The 9/11 Commission says that no one was allowed to depart who the FBI wanted to interview in connection with the 9/11 attacks. Incidentally, we can't get the manifest of the passenger list; I think Senator LAUTENBERG has gotten one of them, but the rest of them have not been made available—but at any rate, the 9/11 Commission says that no one was allowed to depart who the FBI wanted to interview in connection with the 9/11 attacks.

Just take that for a moment and understand what they are saying. No one was allowed to leave who the FBI wanted to interview in connection with the 9/11 attacks. What about someone who they should have interviewed in connection with financing terrorist activities? What about someone who they should have interviewed because of involvement with a charity that had been financing terrorist activities, perhaps not 9/11 but other terrorist activities?

They say no one was allowed to leave who the FBI wanted to interview in connection with these attacks, but I just described to you two people who left, one who an FBI agent did not want permitted to leave, and the other who had his case reopened on September 19, 2001.

This is really a little too cute, I think. The 9/11 Commission says no one was allowed to leave who might have had some issue dealing with 9/11. But what about other ties to terrorism? The issue is the gathering up of 142 Saudi citizens in the aftermath of 9/11—keeping in mind that 15 of the 19 terrorists on 9/11 were from Saudi Arabia—and putting these 142 people, including two dozen members of the bin Laden family, on 6 secret charter flights, disclosing those flights to no one until they left for Saudi Arabia.

The question for me is, Were any of those people involved in any way in the financing of terrorist activities anywhere any time in the world? That has not been answered. The 9/11 Commission has not answered that and may not answer it, apparently, and most people have stopped asking those questions.

My colleague from New Jersey, Senator LAUTENBERG, asked those questions. I asked those questions. The American people deserve to know answers to those questions.

I don't allege some elaborate coverup. I allege gross incompetence. Somebody said that I was alleging a conspiracy at the White House. I am not alleging that at all. Richard Clarke says that the decision to allow these six secret flights was ''at the highest levels'' of the State Department, the FBI, and the White House. But I am not alleging there is some sort of conspiracy or connection. All I am alleging is gross incompetence, I think, because somebody allowed there to be gathered up a big group of people who should have been properly interrogated, and they allowed them, before those proper interrogations, to jump on six secret charter flights and were given opportunities no one else in this country was given. There are a lot of other Saudi citizens here. A lot of other people weren't given the opportunity to leave this country on secret flights. Why did that happen? How did it happen? Who asked for it and who approved it? Those questions have not yet been answered. I think the American people deserve those answers.

We are told now that there is threat of a substantial terrorist attack

against this country. Two weeks ago we were told that terrorists would attempt to strike this country between now and the election to disrupt the election, or disrupt the two political conventions. The ability of this country to detect and to stop a potential terrorist attack relies on our ability to use good intelligence and the coordination between the intelligence community and our law enforcement community. If that does not work, then we are in trouble.

I don't for the life of me understand how we could have allowed these secret flights to occur without learning everything there was to learn from these passengers. One might say: Well, maybe we would not have learned anything. Maybe not. I expect you would learn something from the two people I described, both of whom had previously been of interest to the FBI, but now, after 9/11, were not questioned thoroughly by the FBI. I don't know about the rest of them.

Someone made a grievous error, in my view. Someone did not exhibit the competence we should expect from those making decisions to protect this country.

I continue to ask these questions. I know my colleague, will, as well, and I hope at some point we will find out what the answers are. Who authorized these flights? Why were they authorized? What is on the passenger manifest list? Are there more Saudis who the FBI should have questioned further who were allowed to leave this country? I don't know the answer to that, but this country, in my judgment, deserves an answer.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Mexico is recognized.

Mr. BINGAMAN. I thank the Chair.

(The remarks of Mr. BINGAMAN pertaining to the introduction of S. 2694 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. BINGAMAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

### 20TH ANNIVERSARY OF RULE 208–AGE 21 ENACTMENT

Mrs. DOLE. Mr. President, 20 years ago this month, as Transportation Secretary, raising the drinking age to 21 across our Nation was a measure I was confident in supporting. I was confident it would prevent crippling and disabling injuries and save thousands of lives.

Statistics of teens driving across State borders, ''blood borders,'' into a neighboring State with a lower drinking age, then driving back under the influence of alcohol, convinced me of the dire need to eliminate the differences between State laws.

Senator FRANK LAUTENBERG, Senator RICHARD LUGAR, and former Senator Jack Danforth were instrumental in the passage of age 21 legislation.

On July 17, 1984, when President Reagan signed this law in a Rose Garden ceremony, he said:

> We know that drinking, plus driving, spells death and disaster. . . . And I know there's one . . . simple measure that will save thousands of young lives . . . if we raise the drinking age.

And it has. Twenty thousand lives have been saved in 20 years. The numbers represent real people, tragedies averted, family members and friends who did not have to suffer the loss of a loved one in an alcohol-related automobile accident. My family had to suffer such a loss. My uncle, just out of college, just about to be married, was hit head on and killed by a drunk driver.

This month also marks the 20th anniversary of another revolution in highway safety. On July 11, 1984, the same week President Reagan signed the age 21 law, the Department of Transportation enacted rule 208 with the goal of saving as many lives as possible as quickly as possible. This successfully resolved the 17-year policy dispute that spanned four administrations. Rule 208 resulted in the production of airbags and the passage of State safety belt laws. It recognized the role of the States in automotive safety. No State, in July 1984, had passed a safety belt law, not a single State. Usage was only 13 percent. Airbags were virtually nonexistent. In fact, I had to look all over to find a car with an airbag to place on the White House lawn for President Reagan and the Cabinet to examine. Consumer acceptance was low. Many people thought airbags would go off just crossing the railroad tracks.

Most of us get into a car and automatically fasten our safety belts today. We barely notice that the vehicle has an airbag. Today, 49 States have belt laws. National belt usage is 79 percent and climbing. There are more than 149 million airbag-equipped vehicles on the road. As of this year, all cars, light trucks, and minivans come equipped with front seat airbags.

The National Safety Council reports that since 1984, 190,000 lives have been saved through this safety trifecta: the 21 drinking age, State safety belt laws, and airbags. They totally changed the climate of highway safety in America. My hat's off to the tremendous team I had at the Transportation Department—Jim Burnley, Diane Steed, Phil Haseltine, Erika Jones, Jenna Dorn, Bob Davis—and many others, like Chuck Hurley of the National Safety Council and the Mothers Against Drunk Driving.

According to the National Safety Council, since 1984, 157,500 lives have been saved by safety belts. The National Highway Traffic Safety Administration estimates that safety belt use has resulted in savings to the U.S. economy of $50 billion in medical care, lost productivity, and other injury-related costs. NHTSA also reports that more than 14,500 lives have been saved by airbags.

The record speaks for itself; however, work remains to be done. I am pleased the highway bill recently passed in the Senate contains numerous safety provisions. In particular, I commend my colleague, Senator JOHN WARNER, for introducing incentives for States to enact primary safety belt laws. Mothers Against Drunk Driving has voiced strong support for primary belt laws, allowing a law enforcement officer to write a citation when observing an unbelted driver or passenger. Secondary enforcement allows the citation only after stopping a vehicle for some other reason.

My home State of North Carolina was one of the first to enact primary belt laws in 1985. Our usage rate last year was 86 percent. But as of May 2004, only 20 States, Puerto Rico, and the District of Columbia have primary laws. According to NHTSA, safety belt usage is much higher on average in States with primary enforcement laws. Two decades after the safety trifecta, incentives for State safety belt laws, airbags, and 21 drinking age are reported by the National Safety Council to have saved 190,000 lives. This is just one example where we continue to strive for improvement, strive to prevent injuries, and strive to save lives.

### UNITED STATES-MOROCCO FREE TRADE AGREEMENT

Mr. HATCH. Mr. President, I express my support for the United States-Morocco Free Trade Agreement. Under the leadership of U.S. Trade Representative Robert Zoellick, the U.S. has once again negotiated a sound free trade agreement with a country that is energetic in their support of U.S. interests around the world.

I thank all of those involved in negotiating this agreement, especially the dedicated staff at the U.S. Trade Representative's Office and my colleagues on the Finance Committee, Chairman GRASSLEY and ranking minority member BAUCUS. Although bilateral trade agreements with relatively small countries are very time consuming and difficult, when taken in aggregate, they add up to a substantial amount of U.S. annual exports. In all, these smaller free-trade agreements end up saving U.S. businesses millions of dollars a year in tariffs and duties and, therefore, are worth all the effort exerted in getting them negotiated and enacted.

The United States-Morocco Free Trade Agreement will open up the Moroccan market to fair trade and will allow U.S. companies to compete effectively. In fact, with the signing of this agreement, more than 95 percent of bilateral trade in consumer and industrial products will become duty free immediately. Industries such as information technology, machinery, chemicals, and construction equipment will gain immediate duty-free access to Morocco. Agricultural markets in Morocco will continue to open up to U.S. imports at a rapid pace. Service industries that are so crucial to the economy of the State of Utah will have rapidly increasing access to Morocco, thereby, allowing banks, consulting companies, insurance companies, and telecommunications companies the ability to compete on a level playing field. Of particular note in this agreement is the inclusion of antibribery and transparency provisions. These provisions will help Morocco in cracking down on illegal activity which hurts U.S. exporters and leads to higher costs for consumers.

Utah companies have exported nearly $1 million worth of goods and services to Morocco over the last 5 years. Although this amount seems relatively modest, I take comfort in the fact that those small businesses engaged in this trade will be saving money under this agreement and be better positioned to increase the amount they export. One million dollars in trade with Morocco may not seem like much when measured against overall Utah exports, but to those individuals whose jobs depend on trade with Morocco, $1 million is a very big deal and I am proud to be able to help them. Much of the products exported by Utah companies are manufactured products and manufacturing jobs can be difficult to hold on to these days. Therefore, I am pleased to help lower barriers around the world and make it easier for Utah manufacturers and their employees to compete.

Utah workers, and American workers collectively, deserve to be treated fairly in the world-wide marketplace and this agreement accomplishes that goal. Fairness and transparency only help U.S. companies compete and that is why I support the swift approval of this implementing legislation.

THE SITUATION IN DARFUR AND SUDAN

Mr. DEWINE. Mr. President, I come to the floor today to discuss the situation in Darfur, Sudan. I have come to the floor many times before to discuss this horrible crisis. I do so again today.

My colleague Senator BIDEN and I have introduced a bill, which I will describe in detail in a few minutes. Significant, I think, within the past hour was a very graphic video and audio description of the situation in Darfur, as it appeared on CNN. I commend it to any colleagues who may have the opportunity to see it, or who can even get a transcript of that show. It is a 3- or 4-minute piece. It clearly demonstrated in the most stark terms that the tragedy of Darfur continues to unfold. We saw little children who were in danger of dying. Some may be dying. They described one man who had been injured—shot within the last week by the militias who came in. So despite the pledges of the Sudanese Government that they will stop the militias from carrying out this genocide, in fact, as we meet here today, it continues.

There has been a discussion about whether genocide is in fact occurring. Some have argued this is not genocide. So as I describe what is in the bill Senator BIDEN and I have introduced today, I want to describe for my colleagues what, under the law, it takes for genocide to occur, what the convention says, and what the facts are.

I am on the floor tonight to discuss whether what is happening in the Darfur region of Sudan is in fact genocide. I believe it is genocide, although for some reason there seems to be some confusion about what that term, in fact, means and what responsibilities come with that once it is determined that genocide is taking place.

I have been using the term ''genocide'' to describe what has been happening in the Darfur region of Sudan since May, and I think it is time, frankly, that this body, as a whole, and the world, more importantly, begins to do the same. That is why Senator BIDEN and I have introduced a bill that refers to what is happening, in fact, as genocide.

I thank my colleague, Senator BIDEN, for his leadership on this issue. He, too, has been calling this genocide since the beginning, and we hope our colleagues will join us and rightly identify the atrocities in Darfur as, in fact, genocide.

Our bill will also prevent any normalization of relations between the U.S. Government and the Sudanese Government unless and until the President of the United States can certify that the Government of Sudan is taking significant and demonstrable steps to stop the militias and allow humanitarian aid to flow.

The bill we have introduced today will allow us to place sanctions on Sudan contingent on improvements in Darfur. Simply put, this bill will use every weapon in our diplomatic arsenal to attack this problem, and, frankly, that is exactly what is needed.

Only when the Government of Sudan satisfies the requirements laid out in this bill—and we have set a high but, frankly, reasonable hurdle—would the Government of Sudan then be eligible for any U.S. assistance.

The bill will authorize $800 million in support of the north-south peace process, but that money will not be available until and unless the Government of Sudan complies with the terms of the bill. But separate and apart from that money, the bill will authorize an additional $200 million for humanitarian assistance for Darfur, obviously not going through the Government of Sudan.

Let me reiterate. The $800 million that we would authorize in support of the north-south peace process would only be available if and when the genocide has stopped, the atrocities have stopped, the humanitarian situation has improved, and the President of the United States is confident and willing to certify to Congress that the Government of Sudan is protecting its people.

It is my hope that this bill will be passed before the summer recess so the pressure on the Government of Sudan begins immediately and does not stop until that Government complies.

I want to return to the larger issue of whether what is taking place in Sudan now is, in fact, genocide because there does seem to be a lot of confusion about this issue. There should not be any confusion about it because what is taking place in Sudan today clearly is genocide.

The definition of ''genocide'' can be found in the Convention on the Prevention and Punishment of the Crime of Genocide which entered into force originally in 1951. Specifically, article 2 states that genocide is any one of five acts which is committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group.

Let me repeat that. Specifically, article 2 states that genocide is any one of five acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group.

Here are the five acts, any one of which will qualify for genocide.

First is the act of killing members of the group. There is no doubt that the militias in Darfur, aided by the Government of Sudan, have been killing the Black Africans of Darfur. Their scorched Earth campaign has left 30,000 dead—men, women, children. These people were killed because they were Black, while their Arab neighbors went untouched. That is the fact. Even when the people fled, the militias chased them into Chad trying to finish the job. Under this qualification alone, what is happening should be classified as ''genocide.''

The second group of actions that constitute genocide under the Convention is causing serious bodily or mental harm to members of the group. The militias have used rape as a weapon, killed children in front of the parents, killed parents in front of the children, made husbands stand by while their wives are raped and killed, and have done all of this because their victims are Black.

An Amnesty International report stated:

> The long-term effects of these crimes can be seen in countries like Rwanda where many women and children remain traumatized.

In the same way, the people of Darfur will remain traumatized for years to come, and this is what the militias want. The militias want to make sure that the Black Africans they do not

kill are broken by the atrocities they have witnessed and suffered through.

Let me turn to the third measure. The third way to commit genocide is to deliberately inflict on a group conditions of life calculated to bring about a group's physical destruction in whole or in part. The numbers in Darfur are appalling and clearly makes a case that this provision is satisfied. Over 1 million people—1 million people—have been driven from their homes, over 400 villages have been destroyed, wells have been poisoned, crops have been destroyed, and granaries and herds have been looted. The militias and Government have done everything possible to ensure that the Black Africans of Darfur cannot survive even if they escape the initial killings. There is nothing left for them. Their herds are gone. Their crops are gone. What is worse is the Government militias are also now blocking humanitarian aid.

These tactics, in the face of the worst humanitarian crisis in the world, can be for no other purpose than to ensure that those who escape the killing now die along the way or die in camps.

The militias have turned the camps into prisons, killing those who leave in search of firewood and food. This campaign is, obviously, not just about driving these people off the land; it is about destroying the Black African groups, and that, I say to my colleagues, is what is genocide. That is genocide.

The final two acts that qualify as genocide are imposing measures intended to prevent births within a group and forcibly transferring children of the group to another group. We have reports that children have been abducted and that women are being raped by Arab men to ''make a light baby.''

In these societies, a child adopts the father's ethnic background, and by raping all of these women with the purpose of making lighter children, they are effectively meeting the fourth and fifth criteria for genocide in the Convention.

Specifically on the fifth criteria for genocide, forcibly transferring children from one group to another group, I want to share with my colleagues in the Senate the story of a woman named Mecca. She was killed by the militias when she tried to stop them from taking her 3-year-old son. I am sure there are countless others who were killed trying to save their children, as any parent would. For these parents, for the children who have been abducted, for the girls and women who have been raped, for the people dying right now, I ask this body, I plead with this body to support using the term ''genocide'' because that is what it is.

Although we can make a case that all five of these provisions have been met, the Convention is very specific. The Convention states that any one of these actions constitutes genocide. The fact that we have evidence to support all five qualifying categories only makes the decision to call this genocide that much easier.

The question remains, though, if we call it genocide, what does that mean? What is the significance? Maybe when we know the answer, that will tell us why sometimes some people in the international community may be a little reluctant to call it genocide. The answer to the question once again is right in the convention, both in its title and in its articles. The document is called the Convention on the Prevention and Punishment of the Crime of Genocide. It is called that for a good reason.

We need to make sure that the crimes being committed in Darfur are both prevented and punished. To prevent these crimes, the Government of Sudan and the militias need to be forced to end their reign of terror. We have tried to use diplomatic pressure to get them to start. The U.N. Secretary General and our own Secretary of State Colin Powell both went to the region to plead with the Government to stop the atrocities. The U.N. even submitted a draft U.N. Security Council resolution including targeted sanctions on the militias and an option for sanctions on the Sudanese Government if they did not keep their promises to rein in the militias. All of this, and yet, as Secretary Powell has said, the Government of Sudan is still not keeping their promises. The atrocities continue. That means to prevent genocide, we will need more than promises and high-level visits.

Quite frankly and bluntly, we need troops on the ground. The African Union is going to send 300 peacekeepers, but we all know that is not enough for a region that is the size of Texas. We need more countries to commit troops, and we, the U.S. Government, need to be prepared to fund and assist these troops in reaching the region and protecting the civilian population of Darfur.

The second major responsibility we have under the convention is to ensure that the crime of genocide is punished. The Government of Sudan must try those individuals suspected of committing these atrocities, and if they are found guilty, they must punish them. This includes vetting the ranks of the military to ensure that no further militia members find refuge there. It also means not just rounding up a few low-level members of the militias and punishing them. That is not enough.

In addition, the international community will not accept show trials and, if necessary, an international tribunal should be convened to ensure that justice is served in Darfur.

Justice also must be blind to the position held by those responsible for genocide. If any public officials in Sudan are guilty of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, an attempt to commit genocide, or complicity in genocide, they must be held just as accountable as the militia members themselves.

It does no one any good to wait until after the fact to call this genocide. Let's not wait 6 months. Let's not wait a year. Let's not wait 5 years. That is what happened in Rwanda. We cannot afford to let that mistake happen again. That is why I have been calling this genocide, because it is. We must call this genocide.

I urge my colleagues to join Senator BIDEN and myself in calling this genocide. I urge my colleagues to speak out. My colleagues, Senator MCCAIN, Senator BROWNBACK, and others, have been on the floor of the Senate speaking about this issue. Senator BIDEN and I have a bill. I urge my colleagues to come forward and cosponsor and help us pass this bill. I also urge my colleagues to come forward and help us pass Senator BROWNBACK's resolution condemning this as well. This is something that needs to be done. This Senate needs to speak out. This country needs to take action. The international community needs to take action.

I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. FRIST. Mr. President, I ask unanimous consent that tomorrow morning, immediately following morning business, the Senate resume consideration of S. 2677; provided further that the time until 11:30 be equally divided between the chairman or ranking member of the Finance Committee, and at 11:30 the Senate proceed to vote on passage of the bill with no intervening objection or debate, and all provisions of the governing statute remain in order; I further ask that when the Senate receives from the House the companion measure, the Senate proceed to its consideration, the bill will be read the third time and passed, with no intervening action or debate; provided further, once the Senate has passed the House companion, passage of S. 2677 be vitiated, and the bill be returned to the calendar.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## EXECUTIVE NOMINATIONS

Mr. FRIST. Mr. President, last month, the Judiciary Committee reported the nomination of Henry Saad to be a U.S. circuit judge for the Sixth Circuit. I understand the other side will not agree to a time agreement for an up-or-down vote on this nomination. In addition, the Judiciary Committee reported two more Sixth Circuit nominations today. I hope that we could have the Senate vote on each of these judicial nominations prior to the close of this week.

In addition to these circuit nominations, we have three district judges

that are available on the Executive Calendar. I will be talking to the Democratic leader about scheduling these for consideration as well.

## EXECUTIVE SESSION

### NOMINATION OF HENRY W. SAAD TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

Mr. FRIST. Mr. President, I move to proceed to executive session for the consideration of Executive Calendar No. 705, Henry Saad.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion.

The motion was agreed to.

The ACTING PRESIDENT pro tempore. The clerk will report the nomination.

The legislative clerk read the nomination of Henry W. Saad, of Michigan, to be United States Circuit Judge for the Sixth Circuit.

CLOTURE MOTION

Mr. FRIST. Mr. President, I send a cloture motion to the desk.

The ACTING PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 705, Henry W. Saad, of Michigan, to be United States Circuit Judge for the Sixth Circuit, Vice James L. Ryan, Retired.

Bill Frist, Orrin Hatch, Lamar Alexander, Charles Grassley, Mike Crapo, Pete Domenici, Lincoln Chafee, Mitch McConnell, Ted Stevens, George Allen, Lindsey Graham, John Warner, Jeff Sessions, John Ensign, Trent Lott, Jim Talent, Pat Roberts.

Mr. FRIST. Mr. President, I ask unanimous consent that the mandatory quorum under rule XXII be waived.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## LEGISLATIVE SESSION

Mr. FRIST. Mr. President, I now ask unanimous consent that the Senate resume legislative session.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period for morning business, for debate only, with Senators speaking for up to 10 minutes each.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

### LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

The Nation's leading gay and lesbian news magazine, the Advocate, reported that in Baton Rogue, LA, Cedric Thomas was shot several times on May 18, 2004, and finally succumbed to death from complications related to those wounds several weeks later.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

### SUBSTITUTE AMENDMENT TO THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT OF 2004

Mr. HOLLINGS. Mr. President, today, I submit an amendment to the National Aeronautics and Space Administration Authorization Act, S.2541, to offer a more pragmatic and sustainable approach to future space exploration, given the uncertainties that now confront the National Aeronautics and Space Administration (NASA).

Put simply, this substitute addresses three fundamental flaws with the approach contained in the underlying bill. Like the underlying bill, the substitute endorses human exploration of the Solar System but places it in context alongside other, equally important, elements of scientific discovery in space. Second, it states that a gap in U.S. human launch capability is unacceptable and requires NASA to accelerate the development of the next crewed launch vehicle. Finally, it authorizes the National Aeronautics and Space Administration, NASA, for one year, fiscal year 2005, and rejects the ''go-as-you-pay'' approach the Administration wants to employ in planning for human space exploration.

Allow me to discuss this final point first. The underlying bill authorizes NASA at the President's requested level for five years. I took a different approach—if the agency is embarking on a broad new program, it is unlikely that estimates made now will have any fidelity three, four, or five years from now. After all, we were told in this past week—2 months before the new fiscal year will begin—that it will now take at least $450 million and possibly as much as $760 million more than was requested to fix the Space Shuttle just in fiscal year 2005. If the administration cannot make accurate budget predictions from one year to the next in a 20-year old program, I am not confident that we have any idea what a new exploration program will take. The go-as-you-pay approach is reckless and allows us to avoid difficult questions regarding costs, timetables, and reaching a consensus on the future of human space exploration that will generate not only the support of the space and scientific communities, but of the Congress and the American people, too. It's a license to throw fiscal discipline out the window and drag out projects until they never finish.

Under the substitute I am introducing today, fiscal year 2005 will become a year of planning for a new program of human exploration. The substitute authorizes NASA a single year's funding to plan for the decades of exploration ahead and to begin work on new space transportation and robotic solutions. These solutions are the pathfinders that will enable us to use earth's moon as a test-bed for developing and demonstrating the know-how we need to conduct extended operations on another world's surface beginning by the year 2020.

The substitute attempts to put the proposed program of exploration in context. It embraces the principles of exploration and embraces the human exploration of deep space as a core mission of NASA, including the demonstration of the human beings' abilities to explore and inhabit worlds far beyond the earth. It also embraces the ideals of space flight as expressed in 1958, when the original Space Act and NASA were founded, and restates them in a way that makes them relevant for today—with clarity, division of purposes, and the claim that the United States shall have a U.S. space agency whose chief purpose shall be to contribute to life on earth, learn more about the universe and the mysteries of time and space, and provide leadership for our human pursuits in space.

Under the President's plan, NASA will have a 4-year gap in our ability to launch humans into space. The underlying bill calls for a study of the launch gap. My substitute declares it to be a matter of U.S. policy that any prolonged period of a year or more interruption in U.S. crewed space transportation shall cause the administrator of NASA to report and submit to the Congress a request for supplemental appropriations to resolve those circumstances. Since that is exactly the posture we are headed into in the next decade, we require the administrator to make such report and request within 60 days. In addition, my substitute calls on NASA to immediately begin work on the crew exploration vehicle the next human-capable rocket even in the planning year of FY 2005.

In addition to these three main pillars, the substitute calls for several reports to be prepared to lay the foundation for future programs. It calls for a plan of objectives, capabilities, costs, and milestones that will be used to

manage the new program of human exploration.

The substitute requires an independent report on the changes to NASA's safety, operations, engineering, and management cultures to ensure that these changes meet the requirements of the Columbia Accident Investigation Board and the Nation's expectations of the U.S. space program. It requires NASA and the Departments of Defense and Transportation, each of which plays a key role in managing U.S. space transportation, to report on the state of the U.S. launch industry and to propose how the United States can achieve reliable, affordable, and safe space transportation by 2015. I also call for NASA to report on how the NASA and the United States should be organized to best achieve our broad national goals for space, including the role of industry and international collaboration in the future.

In addition, consistent with the Columbia Accident Investigation Board report, we apply its primary recommendation, to establish independent technical and safety controls over human space flight, to all U.S. organizations conducting human flight in space.

Finally, we call for reports on the Hubble Space Telescope, peer-review assessment of NASA's science programs, and grants to institutions of higher education offering advanced programs in aeronautics and aeronautics-related disciplines. While our legislation attends to the primary matter at hand—the future of human space exploration—it does not ignore the importance of having a balanced program and view of the contributions of space and aeronautics to our economy and society.

Mr. President, our mission to demonstrate humanity's future role in space cannot be founded upon goals without solutions, means that are intangible and unknown, and resources tied to timelines that have no definite end-point or objective. Just this morning, the House VA–HUD Appropriations Subcommittee reduced NASA's FY 2005 appropriation by over $1 billion, which makes it clear there are many doubts about this program and no consensus on how to move ahead.

The Congress must act now to ensure that our bold visions do not take the place of the hard work of planning, budgeting, and executing programs. Let us not pursue the folly of go-as-you-pay, but substitute a reasoned course of ''pay and prove''-as-you-go, harnessing the proper capabilities and assigning the necessary resources to the journey of human exploration needed to make it successful, affordable, and safe.

## IGNORING THE ENVIRONMENT

Mr. LEAHY. Mr. President, while the Senate is using scarce floor time to debate probably the most anti-environmental judicial nominee this body has seen, it has blocked any attempts to strengthen environmental and public health protections. Sitting on deck are critical bills to help cut harmful air pollutants, combat climate change, clean up toxic waste sites and protect our natural resources and improve our nuclear security.

In fact, the Republican leadership only begrudgingly conceded six hours of floor time for Senators MCCAIN and LIEBERMAN's Climate Stewardship Act after blocking its consideration during the energy debate. Although the scientific and economic evidence of the toll climate change is and will take on this country, the Senate leadership continues to bury its head in the sand.

That is 6 hours total this Congress for the environment.

No time to consider Senator JEFFORDS's Clean Power Act that would finally require power plants to reduce emissions of toxic air pollutants like mercury. No time to consider the Chemical Security Act that would help ensure chemical plants are prepared for terrorist attacks. No time for the Toxic Cleanup Polluter Pays Renewal Act to reinstate fees paid by oil and chemical companies to cleanup waste sites across the country. No time for the Nuclear Infrastructure Security Act to improve security at over 100 nuclear facilities around the country.

Despite bipartisan support, Republican leadership has also blocked consideration of several bills to improve coastal protections. Of course, they also have failed to bring up any of the appropriations bills to fund our national parks, wildlife refuges and national forests or environmental cleanup programs.

Hundreds of thousands of Americans suffer every year from illnesses linked to emissions from power plants. One-fourth of Americans live within four miles of a Superfund waste site. Shouldn't the Senate be spending time finding solutions to these issues instead of debating a judicial nominee who wants to dismantle many of environmental protections?

Senate Republicans dare to come to the Senate floor to complain that Democrats are obstructionists when we have already confirmed nearly 200 of President Bush's judicial nominees. The Republican leadership has scheduled hundreds of hours for debate on judicial nominations but has allowed only six hours for debate on the critical issues affecting the health of our environment.

Packing the bench is obviously a top priority for this administration. Protecting our natural resources, along with our health, is not. By picking the most extreme judicial nominees, on the environment and other issues, the Bush administration demonstrates that one of its real long-term goals is to roll back these important protections.

## CARL D. PERKINS VOCATIONAL AND TECHNICAL EDUCATION IMPROVEMENT ACT

Mrs. CLINTON. Mr. President, I rise today in support of the Carl D. Perkins Vocational and Technical Education Improvement Act of 2004.

I am extremely pleased that this bill was written in a bipartisan fashion. I thank Senator ENZI, Senator GREGG, Senator KENNEDY and their staff members, Scott Fleming, Ilyse Schulman, Kelly Scott, and Jane Oates, for working so hard and so quickly to make this happen. I sincerely hope that we continue in this spirit of bipartisanship as we work together on future legislation coming out of the HELP Committee.

It is an often-overlooked fact that the Perkins program is the largest Federal investments in our Nation's high schools. Over 66 percent of all public high schools have at least one vocational and technical education program and 96 percent of high school students in this country will take at least one vocational or technical course while they are in high school. In New York, this means that over 275,000 high school students benefited from Perkins Act programs last year.

Perkins also plays a key role in postsecondary education. According to the National Center for Education Statistics, nearly 38 percent of all degree-seeking undergraduates are pursuing vocational careers. When I travel throughout New York, I hear about how important career and technical education is for tens of thousands of New Yorkers. Institutions such as the Adirondack Community College and the Culinary Institute of America in the Hudson River Valley and thousands of our Nation's community colleges, skill centers and other postsecondary sub-baccalaureate institutions rely on the Perkins program to help provide vocational and technical courses to students.

Last year, 65 New York community colleges received funding under the Perkins Act, directly benefiting over 200,000 community college students. These schools use the funds to provide career counselors and academic curricula that guide students toward high-wage and high-skill occupations.

The Perkins program is extremely important—not just for the numbers of students it serves but for the communities that benefit from a better prepared workforce as a result of these programs. This is why for the last 2 years I have spearheaded a letter to the Senate Appropriations Committee requesting additional funding for Perkins. I also offered an amendment to the budget resolution in 2003 to protect the Perkins programs from cuts because I was deeply concerned that President Bush's proposal to slash the Perkins program by 25 percent would be reflected in the Senate's budget.

The Carl D. Perkins Vocational and Technical Education Improvement Act of 2004 will go a long way towards strengthening vocational and technical

education in New York and across the country. Among other things, it will provide for comprehensive professional development for career and technical education teachers, increase States' flexibility to meet their unique needs, and align secondary and postsecondary indicators with those established in other programs to ultimately reduce paperwork.

I am particularly pleased that this bill also improves programs and services for women and girls pursuing nontraditional occupations. A few weeks ago at a HELP Committee hearing on vocational education, an inspiring woman from New York, Angela Olszewski, testified about how important it is that we support and encourage women and girls in their pursuit of nontraditional, traditionally ''male'' careers—in technology, math, science, and the construction and building trades. Unfortunately, women are still significantly underrepresented in these fields. For example, we know that while the number of women carpenters has tripled since 1972, they still only represent 1.7 percent of all carpenters. You can say the same about many other high-skill, high-wage trades.

Many of these skilled trades industries are experiencing a significant labor shortage and experts expect these shortages to get worse over the next two decades as many workers retire. If women were to enter these professions, most of which are unionized and pay a livable paycheck and benefits, women would increase their earnings and standard of living for their families. For example, a journey-level electrician will make over $1,000,000 more than a typical cashier in a 30-year career. That would go a long way toward putting many women on the road towards selfsufficiency. I want all New York women—and women throughout the country—to have the same opportunities. This bill helps us toward that goal.

I also want to highlight another successful program started in New York called Project Lead the Way. This program builds partnerships among public schools, institutes of higher education, and the private sector to promote preengineering and technology courses for middle school and high school students. Project Lead the Way is now a presence in more than 875 schools in 39 States and should serve as an example for career and technical education of the future.

I am very pleased with this legislation; it shows that we are moving in the right direction, tweaking our education policies to better serve our Nation's career and technical students. I look forward to working with my colleagues as this bill goes to conference.

## ESSAY FROM THE 9/11 FAMILY STEERING COMMITTEE

Mrs. CLINTON. Mr. President, I ask unanimous consent that the following essay be printed in the RECORD on behalf of Kristen Breitweiser, Patricia Casazza, Mindy Kleinberg and Lorie Van Auken who lost their husbands on September 11, 2001 and became advocates on behalf of their own families and all who were affected by the tragic events of that day.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

WHAT IS A CITIZEN TO DO?

How could 19 middle-eastern men simultaneously hijack 4 commercial airplanes in two hours, crash them into the World Trade Center and the Pentagon and murder 3000 innocent people?

With the billions spent each year on defense and intelligence, why did our nation do so little in a defensive posture to mitigate the vast devastation that was brought upon us by these 19 men?

Our research began with every agency and every policy that could possibly shed some light on why the tragedy of 9/11 was not averted. With each revelation and each new understanding, our naïveté waned and the challenges loomed large. The problems were systemic in nature. Changes were needed everywhere. Agencies, 20 years after the Cold War had ended, were still operating in a Cold War posture. Terrorists were not watch-listed. FBI computers were antiquated. Intelligence agents and supervisors failed to analyze and investigate creatively, aggressively, and with curiosity. Congress and the Executive Branch failed to properly share their growing National Security concerns and garner the will of the nation to fight this new war against terrorism. The media was more prone to cover scandal than terrorism.

Our research revealed that numerous indicators throughout our intelligence history illustrated the use, or intended use of planes as missiles. We found field reports, case files and studies, eye witness testimony, intelligence community threat matrices, and Department of Defense mock drills all addressing the ''planes as missiles'' idea.

In fact, during the summer of 2001, President Bush attended the G–8 summit in Genoa Italy where specific protections were put into place to ward against an air attack. Moreover, FBI agents testified in the Embassy bombing trial in NYC during the spring of 2001 that al-Qaeda was interested in suicide hijackers flying planes into buildings—buildings like the World Trade Center and the Pentagon. Finally, we learned that the Olympic Games in Atlanta and Salt Lake City had included aerial attacks in their security protocols.

Indeed, most haunting is what we found out about al-Qaeda and their attempt to attack Atlanta, Georgia during the summer Olympics. Because of the heightened protection and alert status during the Atlanta Games, al-Qaeda got ''spooked'' and called off their planned attack. And thus began the ''what ifs?''

What if the pre-9/11 national security apparatus', agencies and institutions had matched themselves with similar alert levels? What if the 19 hijackers on 9/11 noticed that same type of vigilant security, gotten spooked themselves and delayed their attack by days or even months? More potently, would such a delay have given enough time to our Intelligence Community to discover and/or minimize the damage of the plot?

Could the FBI have had enough time to receive the FISA warrant on Zaccharias Moussaoui? After all, the FBI had enough information to meet probable cause for a FISA warrant because French intelligence in August 2001 had handed over a huge file on Moussaoui linking him to terrorist groups. Moreover, given the fact that Moussaoui was attending the same flight school that the FBI had investigated since 1998 because of the many known middle-eastern terrorists training there, maybe the FBI could have applied for and received a simple criminal warrant.

Perhaps, the internal decision in May 2001 by FISA Court Chief Judge Royce C. Lamberth that had a ''chilling effect'' on all FBI surveillance and wiretapping of terrorist organizations—including Al-Qaeda cells in the US, during the spring and summer 2001 could have been lifted or at the very least tempered?

Or maybe the hijackers could have been watch-listed and forbidden to fly on commercial flights? What if the airline pilots were told that hijackers were capable of flying commercial airliners and to not allow anyone into the cockpit—whether or not they were in uniform? What if airport security was told to be on the lookout for possible terrorist suspects and/or contraband such as gas masks, mace, pepper spray, guns and/or knives?

Could the NSA have translated the phone conversations or intercepts of the hijackers, Bin Laden, Bin Laden family members, and other Al-Qaeda operatives that they had in their possession throughout the summer and early fall of 2001? Could the NSA have acted on and/or communicated this information to the FBI, CIA, and National Security Council in time?

Perhaps, FBI Agent David Frasca may have had the time to read the Phoenix memorandum and the Moussaoui information both of which were on his desk by August 2001 and put the two files together?

Could the FBI have had the time to find two of the hijackers, Al-Midhar and Alhazmi, who were already under investigation for two years by the CIA after it had conducted surveillance on a terrorist meeting in Malaysia in January 2000? After all, Al-Midhar and Al-Hazmi were living in San Diego, listed in the phone book, had bank accounts in their own names, trained at flight schools and resided with a known FBI informant?

Could the CIA have found Marwan Al-Shehi? He was Mohammed Atta's roommate and visited the same flight school that Moussaoui was arrested at by the FBI. The CIA had the name ''Marwan'' and a phone number given to them by the German government. Could they have had the time to follow-up with this information?

Could our National Security Council's Principals who first met on September 4, 2001 had more time to hold a second meeting where they could have discussed the threat spikes and foreign government warnings from Russia, Israel, Germany, and Egypt that Al-Qaeda was planning an imminent and spectacular attack on the domestic US? Would our NSC Principals have had the time to harden our homeland security?

Could NORAD have placed fighter jets on shorter alert status, so that our air defense did not arrive too late like it did on 9/11? Perhaps, with over an hour's worth of notice before the attack on the Pentagon, the F–16's could have arrived on time to protect our Department of Defense.

Could we learn from this tragedy so that it would not be repeated? Could our fellow citizens be willing to shed sunlight onto the inadequacies of our government's ability to defend itself against terrorism? Could our elected officials cease the diversionary tactics of ''mudslinging'' and ''name-calling'' long enough to allow the facts to be revealed, examined, and fixed? Could the media no longer fall prey to sensational stories and feed the public information that truly informs and educates them about our nation's ability to fight terrorism?

Democracy cannot prosper on blind-faith. To work effectively, democracy's foundation—the people, must be well informed. And, in order to be more informed, more responsive, and more prepared for the challenges ahead, we must continue to ask questions to our leaders; that is our duty as responsible citizens. It is why the 9/11 Independent Commission's investigative work, public hearings, public Final Report and public Recommendations are so vital.

The only way elected officials, agencies and institutions can be held accountable and responsible is if we, the American people, stay vigilant and informed. Before 9/11, the will of the nation to fight terrorism was not present. Post 9/11, the will of this nation exists to confront the battle of terrorism.

But fighting terrorism is not simply an offensive strategy. It is a combined and cumulative process. We need the intelligence agencies to investigate more creatively and aggressively. We need our judicial process to permit the fair and just prosecution of terrorists. We need our foreign policy to issue sanctions to all countries that sponsor terrorism, even if that means our foreign economic dependency suffers. We need our Treasury Department to have the resources to dry up money lines that fund terrorist organizations. We need big business interests to yield to the common good.

Our elected officials who take an oath of office to lead, protect, and serve need to be held responsible and accountable. They must have the courage and curiosity to ask questions, to have established and reliable plans and back-up plans, to demand action, reforms and to welcome personal responsibility.

Most importantly, our elected officials need to remember that they are serving at the will of the people. As our public stewards, it should not be the sanctity of their own political well-being that most consumes their actions and decisions. More correctly, it should be the safety, security and well-being of the people that they serve that should pre-occupy their time.

In a post–9/11 world, it is the responsible preservation of all life that must transcend politics.

KRISTEN BREITWEISER,
PATRICIA CASAZZA,
MINDY KLEINBERG,
LORIE VAN AUKEN,
*Members of the 9/11 Family Steering Committee for the 9/11 Independent Commission.*

Mrs. CLINTON. In light of the pending release of the 9/11 Commission report, I wish to recognize the Family Steering Committee for the 9/11 Independent Commission and their efforts to establish the National Commission on Terrorist Attacks Upon the United States.

## ADDITIONAL STATEMENTS

### HONORING THE CITY OF MENNO

• Mr. JOHNSON. Mr. President, I honor and publicly recognize the 125th anniversary of the founding of the city of Menno, SD. The city of Menno has a proud past and a promising future.

The area that was to become the city of Menno was settled in 1874 by a group of Black Sea Germans from Russia. The great majority of settlers made their living off the land. According to a U.S. Government survey, Menno and the land surrounding it is made up of some of the richest most fertile soil in the country. Menno owes its beginnings to the railroad industry, which brought much-needed commerce.

The city of Menno bears the name intended for the town of Freeman, 10 miles away. When railroad officials were nailing the signs bearing the names of new towns to the depots, the name boards of the neighboring towns of Menno and Freeman were accidentally interchanged. With the result that Menno derives its name from the large settlement of Mennonites at Freeman, called Mennonites because the sect was founded by Menno Simons, while the town of Freeman is named for an early settler of Menno. The city of Menno was officially settled in 1879.

Currently, more than 800 people live in Menno. The city has already started celebrations for its 125th anniversary and will continue them throughout the year. It is with great honor that I advise my colleagues of the achievements made by this great community.•

### HONORING THE MUHLENBERG CAREER DEVELOP

• Mr. BUNNING. Mr. President, today I take the opportunity to honor the Muhlenberg Career Development Center. Beginning with the groundbreaking in 1973, this institution has been working diligently to better the lives of all its students. This has been acknowledged by a four-star rating from the National Job Corps Association and by the National Job Corps Award for Excellence it received from the same association earlier this year. The Career Center also received a ''Top 50'' national ranking for Job Corps centers.

The Muhlenberg Career Development Center has a profound impact on the surrounding community. The center employs 135 men and women, making it the fourth largest employer in Muhlenberg County. The center also generates a substantial amount of revenue for the community through the contract it has with the Department of Labor. The standard of excellence set by the career development center is greatly appreciated by the 404 students who are currently working towards a GED and vocation there. The dedication exhibited by the Muhlenberg Career Development Center towards its students, county, State, and country deserves to be recognized and honored.

The citizens of Kentucky are proud to have the Muhlenberg Career Development Center as a part of their community. Their example of hard work and determination should be followed by all in the Commonwealth. The Muhlenberg Career Development Center has successfully found a way to bring out the best in its men and women. I personally thank the leaders and supporters of this great organization for continually producing strong and bright men and women committed to making Kentucky a better place to live.•

### TRIBUTE TO DR. NEAL R. BERTE

• Mr. SESSIONS. Mr. President, I take this opportunity to pay tribute to an outstanding citizen from my home State of Alabama. Dr. Neal Berte has been president of Birmingham-Southern College in Alabama since 1976. He recently retired, ending his 29 years of service to this great liberal arts institution. It has been my pleasure to work with Dr. Berte during my time in the Senate on issues affecting higher education and community service in the Birmingham area.

Dr. Berte recognized early on in his career the need to produce future leaders rich in a background of service to others. Therefore, he made service-learning a priority for himself and Birmingham-Southern students. Almost every student who graduates from Birmingham Southern College leaves the Hilltop having had some type of community-service experience. From serving food at a homeless shelter to mentoring children at the local elementary school, the opportunities are endless and involvement is always encouraged. Dr. Berte has led this effort by deeds, not words. He is the first to arrive at a service event and the last to leave. His involvement in the local community is unparalleled and has led to his being awarded Birmingham's Distinguished Citizen Award, Citizen of the Year, and the Erskine Ramsey Award for Outstanding Civic Service.

While developing and implementing an aggressive service-learning component to higher education has been a great achievement at Birmingham-Southern, it is far from being his only accomplishment. During the ''Berte years,'' Birmingham-Southern College's student enrollment has doubled, the academic profile of the student body has increased and regularly leads other Alabama colleges and universities, the number of faculty has increased by almost 70 percent, the student-faculty ratio has lowered from 18–to–1 to 12-to-1, the campus has expanded, and the college's endowment has grown from $11 million to more than $122 million. It is difficult to fully gauge the impact Dr. and Mrs. Berte have had over the past 29 years, however, perhaps it is best captured in Dr. Berte's relationship with the students that have flowed through the campus. Dr. Berte's support of the student body has been unwavering. From attending campus sporting events to carrying the boxes of new students on move-in day, Dr. Berte's face has been a constant presence at events throughout each school year. Amazingly, he has learned the name and face of almost every student who has walked the halls at BSC and makes it a priority to greet each person he meets by name and to inquire about something occurring in his or her life at the moment. I think this

commitment to the students, the life of any college, is what sets Dr. Berte apart and makes his retirement so poignant for so many of the school's faculty, alumni, and friends. For many, Dr. Berte is Birmingham-Southern.

Birmingham-Southern has achieved great success during Dr. Berte's time as president. The college has been consistently recognized by U.S. News & World Report as one of America's top national liberal arts colleges. It is currently a Tier I institution and ranked among the top 66 liberal arts colleges in the country. Its other recognitions include ''100 Best Values in Private Colleges,'' ''America's Best Christian Colleges,'' ''Most Efficiently Operated Schools in America,'' ''Colleges that Encourage Character Development,'' and ''Best Values.'' The school is home to a Phi Beta Kappa chapter and annually ranks No. 1 among Alabama schools in percentage of all graduates accepted to medical and dental schools.

When Dr. Berte took over at Birmingham-Southern things were not so rosy. There had been several short-term presidents and the college faced many challenges. Few would dispute that his leadership has guaranteed that Birmingham-Southern is one of the premier liberal arts colleges in America and that few, if any, such colleges have had better leadership in the past 30 years. Dr. Berte has led with vision, compassion, constancy, faith, and courage. His superb graduates daily validate the value of the liberal arts curriculum. I have watched his success over the years with growing admiration. He has truly been one of the best college presidents in America.

But, as it is with any great thing, Dr. Berte's tenure must end. He will remain chancellor of Birmingham-Southern College and go on to increase his involvement in the community, as well as spend some much deserved time with his wife, children, and grandchildren. As Birmingham-Southern begins a new era with a new president, I would just like to take a moment to thank Dr. Berte for his service to this institution and the State of Alabama. I wish him the best and would like to echo his optimism that ''the best is yet to come.''•

## HONORING THE CITY OF ELKTON

• Mr. JOHNSON. Mr. President, I wish today to honor and publicly recognize the 125th anniversary of the founding of the city of Elkton, SD. The city of Elkton has a proud past and a promising future.

The first settler in the area had been E.D. Johnson, who in the spring of 1877 had obtained a tree claimed half a mile north of the future site of the town. Other families started to move into the area in 1878 just in time for the railroad to arrive in 1879. Railroad officials wanted to place a station between the communities of Verdi and Aurora. Local railroad officials named it Ivanhoe, originally. Not until July 21, 1882 was its name changed officially from Ivanhoe to Elkton. The name came from Elkton, MD, which was the early home of one of the railroad officials. The town was plotted in the spring of 1880 and soon sprouted a variety of different businesses.

In 1896, an Elkton man named Henry Heintz obtained a patent on what some locals believe could have been the first airship in the United States. Working with Henry Wulf of Arizona, Heintz built a machine which lifted off the ground in its trial flight, to the amazement and delight of spectators. The craft wouldn't move ahead, however, and returned almost immediately to earth. There are apparently no records of rebuildings and further attempts.

Currently, more than 600 people live in Elkton. The city has already started celebrations for its 125th anniversary and will continue them throughout the year. These include an all-high school alumni reunion and a street dance. It is with great honor that I advise my colleagues of the achievements made by this great community.•

## MESSAGE FROM THE HOUSE

At 2:23 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that pursuant to House Resolution 719 the Senate is requested to return to the House of Representatives the bill (H.R. 4766) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2005, and for other purposes.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 142. An act to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Prado Basin Natural Treatment System Project, to authorize the Secretary to carry out a program to assist agencies in projects to construct regional brine lines in California, and to authorize the Secretary to participate in the Lower Chino Dairy Area desalination demonstration and reclamation project.

H.R. 1014. An act to require Federal land managers to support, and to communicate, coordinate, and cooperate with, designated gateway communities, to improve the ability of gateway communities to participate in Federal land management planning conducted by the Forest Service and agencies of the Department of the Interior, and to respond to the impacts of the public use of the Federal lands administered by these agencies, and for other purposes.

H.R. 1156. An act to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to increase the ceiling on the Federal share of the costs of phase I of the Orange County, California, Regional Water Reclamation Project.

H.R. 1587. An act to promote freedom and democracy in Vietnam.

H.R. 2619. An act to provide for the expansion of Kilauea Point National Wildlife Refuge.

H.R. 2831. An act to authorize the Secretary of the Interior to convey the Newlands Project Headquarters and Maintenance Yard Facility to the Truckee-Carson Irrigation District.

H.R. 2911. An act to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Inland Empire regional recycling project and in the Cucamonga County Water District recycling project.

H.R. 3785. An act to authorize the exchange of certain land in Everglades National Park.

H.R. 3819. An act to redesignate Fort Clatsop National Memorial as the Lewis and Clark National Historical Park, to include in the park sites in the State of Washington as well as the State of Oregon, and for other purposes.

H.R. 3874. An act to convey for public purposes certain Federal lands in Riverside County, California, that have been identified for disposal.

H.R. 3932. An act to amend Public Law 99–338 to authorize the continued use of certain lands within the Sequoia National Park by portions of an existing hydroelectric project, and for other purposes.

H.R. 4115. An act to amend the Act of November 2, 1966 (80 Stat. 1112), to allow binding arbitration clauses to be included in all contracts affecting the land within the Salt River Prima-Maricopa Indian Reservation.

H.R. 4158. An act to provide for the conveyance to the Government of Mexico of a decommissioned National Oceanic and Atmospheric Administration ship, and for other purposes.

H.R. 4170. An act to authorize the Secretary of the Interior to recruit volunteers to assist with, or facilitate, the activities of various agencies and offices of the Department of the Interior.

H.R. 4492. An act to amend the Omnibus Parks and Public Lands Management Act of 1996 to extend the authorization for certain national heritage areas, and for other purpose.

H.R. 4625. An act to reduce temporarily the royalty required to be paid for sodium produced on Federal lands, and for other purposes.

The message also further announced that the House has passed the following bill, without amendment:

S. 2264. An act to require a report on the conflict in Uganda, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 114. Concurrent resolution concerning the importance of the distribution of food in schools to hungry or malnourished children around the world.

## ENROLLED BILL SIGNED

The following enrolled bill, previously signed by the Speaker, was signed on today, July 20, 2004, by the President pro tempore (Mr. STEVENS).

S. 1167. An act to resolve the boundary conflicts in Barry and Stone Counties in the State of Missouri.

## MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 142. To amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the

Interior to participate in the Prado Basin Natural Treatment System Project, to authorize the Secretary to carry out a program to assist agencies in projects to construct regional brine lines in California, and to authorize the Secretary to participate in the Lower Chino Dairy Area desalination demonstration and reclamation project; to the Committee on Energy and Natural Resources.

H.R. 1014. An act to require Federal land managers to support, and to communicate, coordinate, and cooperate with, designated gateway communities, to improve the ability of gateway communities to participate in Federal land management planning conducted by the Forest Service and agencies of the Department of the Interior, and to respond to the impacts of the public use of the Federal lands administered by these agencies, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 1156. An act to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to increase the ceiling on the Federal share of the costs of phase I of the Orange County, California, Regional Water Reclamation Project; to the Committee on Energy and Natural Resources.

H.R. 2619. An act to provide for the expansion of Kilauea Point National Wildlife Refuge; to the Committee on Environment and Public Works.

H.R. 2831. An act to authorize the Secretary of the Interior to convey the Newlands Project Headquarters and Maintenance Yard Facility to the Truckee-Carson Irrigation District; to the Committee on Energy and Natural Resources.

H.R. 2991. An act to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Inland Empire regional recycling project and in the Cucamonga County Water District recycling project; to the Committee on Energy and Natural Resources.

H.R. 3874. An act to convey for public purposes certain Federal lands in Riverside County, California, that have been identified for disposal; to the Committee on Energy and Natural Resources.

H.R. 3932. To amend Public Law 99–338 to authorize the continued use of certain lands within the Sequoia National Park by portions of an existing hydroelectric project, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 4158. An act to provide for the conveyance to the Government of Mexico of a decommissioned National Oceanic and Atmospheric Administration ship, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 4170. An act to authorize the Secretary of the Interior to recruit volunteers to assist with, or facilitate, the activities of various agencies and offices of the Department of the Interior; to the Committee on Energy and Natural Resources.

H.R. 4625. An act to reduce temporarily the royalty required to be paid for sodium produced on Federal lands, and for other purposes; to the Committee on Energy and Natural Resources.

## MEASURES PLACED ON THE CALENDAR

The following bills were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 4115. An act to amend the Act of November 2, 1966 (80 Stat. 1112), to allow binding arbitration clauses to be included in all contracts affecting the land within the Salt River Pima-Maricopa Indian Reservation.

H.R. 3785. An act to authorize the exchange of certain land in Everglades National Park.

## MEASURES READ THE FIRST TIME

The following bills were read the first time:

H.R. 4492. An act to amend the Omnibus Parks and Public Lands Management Act of 1996 to extend the authorization for certain national heritage areas, and for other purposes.

S. 2694. A bill to amend title XVIII of the Social Security Act to provide for the automatic enrollment of medicaid beneficiaries for prescription drug benefits under part D of such title, and for other purposes.

S. 2695. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to expand the definition of firefighter to include apprentices and trainees, regardless of age or duty limitations.

## ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, July 20, 2004, she had presented to the President of the United States the following enrolled bill:

S. 1167. An act to resolve the boundary conflicts in Barry and Stone Counties in the State of Missouri.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CAMPBELL, from the Committee on Indian Affairs, with an amendment in the nature of a substitute:

S. 1996. A bill to enhance and provide to the Oglada Sioux Tribe and Angostura Irrigation Project certain benefits of the Pick-Sloan Missouri River basin program (Rept. No. 108–311).

By Mr. GRASSLEY, from the Committee on Finance, without amendment:

H.R. 982. A bill to clarify the tax treatment of bonds and other obligations issued by the Government of American Samoa.

By Mr. HATCH, from the Committee on the Judiciary, without amendment and with a preamble:

S. Res. 401. A resolution designating the week of November 7 through November 13, 2004, as ''National Veterans Awareness Week'' to emphasize the need to develop educational programs regarding the contributions of veterans to the country.

S. Res. 404. A resolution designating August 9, 2004, as ''Smokey Bear's 60th Anniversary''.

S. Res. 407. A resolution designating October 15, 2004, as ''National Mammography Day''.

By Mr. GRASSLEY, from the Committee on Finance, without amendment:

S. 2677. A bill to implement the United States-Morocco Free Trade Agreement.

By Mr. HATCH, from the Committee on the Judiciary, without amendment:

S.J. Res. 4. A joint resolution proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States.

By Mr. HATCH, from the Committee on the Judiciary, without amendment and with a preamble:

S. Con. Res. 109. A concurrent resolution commending the United States Institute of Peace on the occasion of its 20th anniversary and recognizing the Institute for its contribution to international conflict resolution.

## EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. SHELBY for the Committee on Banking, Housing, and Urban Affairs.

*Juan Carlos Zarate, of California, to be an Assistant Secretary of the Treasury.

*Stuart Levey, of Maryland, to be Under Secretary of the Treasury for Enforcement.

*Carin M. Barth, of Texas, to be Chief Financial Officer, Department of Housing and Urban Development.

By Mr. GRASSLEY for the Committee on Finance.

*Patrick P. O'Carroll, Jr., of Maryland, to be Inspector General, Social Security Administration.

*Timothy S. Bitsberger, of Massachusetts, to be an Assistant Secretary of the Treasury.

*Charles L. Kolbe, of Iowa, to be a Member of the Internal Revenue Service Oversight Board for the remainder of the term expiring September 14, 2004.

*Paul Jones, of Colorado, to be a Member of the Internal Revenue Service Oversight Board for a term expiring September 14, 2008.

By Mr. HATCH for the Committee on the Judiciary.

Richard A. Griffin, of Michigan, to be United States Circuit Judge for the Sixth Circuit.

David W. McKeague, of Michigan, to be United States Circuit Judge for the Sixth Circuit.

Virginia Maria Hernandez Covington, of Florida, to be United States District Judge for the Middle District of Florida.

Michael H. Schneider, Sr., of Texas, to be United States District Judge for the Eastern District of Texas.

Robert Clark Corrente, of Rhode Island, to be United States Attorney for the District of Rhode Island for the term of four years.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mrs. LINCOLN:

S. 2689. A bill to amend the Internal Revenue Code of 1986 to replace the recapture bond provisions of the low income housing tax credit program; to the Committee on Finance.

By Mr. HARKIN:

S. 2690. A bill to provide that no funds may be used to provide assistance under section 8 of the United States Housing Act of 1937, to certain students at institutions of higher education, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LIEBERMAN (for himself, Mrs. CLINTON, Mr. DODD, and Mr. SCHUMER):

S. 2691. A bill to establish the Long Island Sound Stewardship Initiative; to the Committee on Environment and Public Works.

By Mr. JEFFORDS (for himself, Mr. SARBANES, and Mrs. FEINSTEIN):

S. 2692. A bill to authorize the Secretary of the Department of Housing and Urban Development to make grants to States for affordable housing for low-income persons, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. 2693. A bill to designate the facility of the United States Postal Service located at 1475 Western Avenue, Suite 45, in Albany, New York, as the ''Lieutenant John F. Finn Post Office''; to the Committee on Governmental Affairs.

By Mr. BINGAMAN:

S. 2694. A bill to amend title XVIII of the Social Security Act to provide for the automatic enrollment of medicaid beneficiaries for prescription drug benefits under part D of such title, and for other purposes; read the first time.

By Mr. SPECTER:

S. 2695. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to expand the definition of firefighter to include apprentices and trainees, regardless of age or duty limitations; read the first time.

By Mr. SCHUMER:

S. 2696. A bill to establish the United States Homeland Security Signal Corps to ensure proper communications between law enforcement agencies; to the Committee on the Judiciary.

By Mrs. HUTCHISON:

S. 2697. A bill to authorize the President to posthumously award a gold medal on behalf of the Congress to the seven members of the crew of the space shuttle Columbia in recognition of their outstanding and enduring contributions to the Nation; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. GRASSLEY (for himself and Mr. BAUCUS):

S. 2698. A bill to amend title XVIII of the Social Security Act to revoke the unique ability of the Joint Commission for the Accreditation of Healthcare Organizations to deem hospitals to meet certain requirements under the medicare program and to provide for greater accountability of the Joint Commission to the Secretary of Health and Human Services; to the Committee on Finance.

By Ms. SNOWE:

S. 2699. A bill to deauthorize a certain portion of the project for navigation, Rockland Harbor, Maine; to the Committee on Environment and Public Works.

By Mr. SPECTER (for himself and Mr. KERRY):

S. 2700. A bill to provide an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958 through September 17, 2004, and for other purposes; considered and passed.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SMITH (for himself, Mr. ALEXANDER, Mr. BOND , Mr. BUNNING, Mr. CHAMBLISS, Mrs. CLINTON, Mr. COLEMAN, Ms. COLLINS, Mr. CORZINE, Mr. CRAPO, Mrs. DOLE, Mr. FITZGERALD, Mr. LIEBERMAN, Mr. LUGAR, Mrs. MURRAY, Mr. SCHUMER, Mr. WYDEN, Mr. DEWINE, Ms. MIKULSKI, and Mr. ALLARD):

S. Res. 408. A resolution supporting the construction by Israel of a security fence to prevent Palestinian terrorist attacks, condemning the decision of the International Court of Justice on the legality of the security fence, and urging no further action by the United Nations to delay or prevent the construction of the security fence; to the Committee on Foreign Relations.

By Mr. BAYH:

S. Res. 409. A resolution encouraging increased involvement in service activities to assist senior citizens; to the Committee on the Judiciary.

By Mr. FRIST (for himself and Mr. DASCHLE):

S. Res. 410. A resolution to authorize Senate employees to testify and produce documents with legal representation; considered and agreed to.

By Mr. FRIST (for himself and Mr. DASCHLE):

S. Res. 411. A resolution to authorize document production by the Select Committee on Intelligence; considered and agreed to.

By Mr. FITZGERALD (for himself, Mr. LEVIN, Mr. MCCAIN, and Mr. DURBIN):

S. Res. 412. A resolution expressing the sense of the Senate regarding the importance of maintaining the independence and integrity of the Financial Accounting Standards Board; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SCHUMER (for himself, Mrs. CLINTON, Mr. LIEBERMAN, and Mrs. BOXER):

S. Con. Res. 127. A concurrent resolution expressing the sense of Congress that the President should designate September 11 as a national day of voluntary service, charity, and compassion; to the Committee on Health, Education, Labor, and Pensions.

By Mr. NELSON of Nebraska (for himself and Mr. CHAMBLISS):

S. Con. Res. 128. A concurrent resolution expressing the sense of Congress regarding the importance of life insurance, and recognizing and supporting National Life Insurance Awareness Month; to the Committee on the Judiciary.

## ADDITIONAL COSPONSORS

S. 533

At the request of Mr. SCHUMER, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 533, a bill to provide for a medal of appropriate design to be awarded by the President to the next of kin or other representative of those individuals killed as a result of the terrorist attacks of September 11, 2001.

S. 540

At the request of Mr. INHOFE, the names of the Senator from New Mexico (Mr. DOMENICI) and the Senator from Oklahoma (Mr. NICKLES) were added as cosponsors of S. 540, a bill to authorize the presentation of gold medals on behalf of Congress to Native Americans who served as Code Talkers during foreign conflicts in which the United States was involved during the 20th Century in recognition of the service of those Native Americans to the United States.

S. 1068

At the request of Mr. DODD, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 1068, a bill to amend the Public Health Service Act to establish grant programs to provide for education and outreach on newborn screening and coordinated followup care once newborn screening has been conducted, and for other purposes.

S. 1368

At the request of Mr. LEVIN, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 1368, a bill to authorize the President to award a gold medal on behalf of the Congress to Reverend Doctor Martin Luther King, Jr. (posthumously) and his widow Coretta Scott King in recognition of their contributions to the Nation on behalf of the civil rights movement.

S. 1888

At the request of Mr. SPECTER, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 1888, a bill to halt Saudi support for institutions that fund, train, incite, encourage, or in any other way aid and abet terrorism, and to secure full Saudi cooperation in the investigation of terrorist incidents.

S. 1890

At the request of Mr. CRAIG, his name was added as a cosponsor of S. 1890, a bill to require the mandatory expensing of stock options granted to executive officers, and for other purposes.

S. 1963

At the request of Mrs. BOXER, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 1963, a bill to amend the Communications Act of 1934 to protect the privacy right of subscribers to wireless communication services.

S. 2077

At the request of Mr. BAYH, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 2077, a bill to amend title XIX of the Social Security Act to permit additional States to enter into long-term care partnerships under the Medicaid Program in order to promote the use of long-term care insurance.

S. 2158

At the request of Ms. COLLINS, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 2158, a bill to amend the Public Health Service Act to increase the supply of pancreatic islet cells for research, and to provide for better coordination of Federal efforts and information on islet cell transplantation.

S. 2417

At the request of Mr. COLEMAN, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 2417, a bill to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to furnish care for newborn children of women veterans receiving maternity care, and for other purposes .

S. 2425

At the request of Mr. COCHRAN, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 2425, a bill to amend the Tariff Act of 1930 to allow for improved administration of new shipper administrative reviews.

S. 2437

At the request of Mr. ENSIGN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 2437, a bill to amend the Help America Vote Act of 2002 to require a voter-verified permanent record or hardcopy under title III of such Act, and for other purposes.

S. 2468

At the request of Ms. COLLINS, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 2468, a bill to reform the postal laws of the United States.

S. 2564

At the request of Mrs. HUTCHISON, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 2564, a bill to amend the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 to authorize additional projects and activities under that Act, and for other purposes.

S. 2568

At the request of Mr. BIDEN, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 2568, a bill to require the Secretary of the Treasury to mint coins in commemoration of the tercentenary of the birth of Benjamin Franklin, and for other purposes.

S. 2654

At the request of Mr. DODD, the names of the Senator from Massachusetts (Mr. KENNEDY), the Senator from New Mexico (Mr. BINGAMAN) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 2654, a bill to provide for Kindergarten Plus programs.

S. 2659

At the request of Ms. COLLINS, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2659, a bill to extend the temporary increase in payments under the medicare program for home health services furnished in a rural area.

S. 2686

At the request of Mr. ENZI, the names of the Senator from Ohio (Mr. DEWINE) and the Senator from Iowa (Mr. HARKIN) were added as cosponsors of S. 2686, a bill to amend the Carl D. Perkins Vocational and Technical Education Act of 1998 to improve the Act.

S.J. RES. 11

At the request of Mr. KENNEDY, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S.J. Res. 11, a joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for women and men.

S. CON. RES. 112

At the request of Ms. CANTWELL, her name was added as a cosponsor of S. Con. Res. 112, a concurrent resolution supporting the goals and ideals of National Purple Heart Recognition Day.

S. CON. RES. 113

At the request of Mr. SMITH, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. Con. Res. 113, a concurrent resolution recognizing the importance of early diagnosis, proper treatment, and enhanced public awareness of Tourette Syndrome and supporting the goals and ideals of National Tourette Syndrome Awareness Month.

S. CON. RES. 124

At the request of Mr. CORZINE, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. Con. Res. 124, a concurrent resolution declaring genocide in Darfur, Sudan.

S. CON. RES. 126

At the request of Mr. COLEMAN, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. Con. Res. 126, a concurrent resolution condemning the attack on the AMIA Jewish Community Center in Buenos Aires, Argentina, in July 1994, and expressing the concern of the United States regarding the continuing, decade-long delay in the resolution of this case.

S. RES. 271

At the request of Mr. CORZINE, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. Res. 271, a resolution urging the President of the United States diplomatic corps to dissuade member states of the United Nations from supporting resolutions that unfairly castigate Israel and to promote within the United Nations General Assembly more balanced and constructive approaches to resolving conflict in the Middle East.

S. RES. 389

At the request of Mr. CAMPBELL, the names of the Senator from Alabama (Mr. SESSIONS) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. Res. 389, a resolution expressing the sense of the Senate with respect to prostate cancer information.

S. RES. 401

At the request of Mr. BIDEN, the names of the Senator from Nevada (Mr. REID) and the Senator from South Carolina (Mr. GRAHAM) were added as cosponsors of S. Res. 401, a resolution designating the week of November 7 through November 13, 2004, as ''National Veterans Awareness Week'' to emphasize the need to develop educational programs regarding the contributions of veterans to the country.

At the request of Mr. CRAIG, his name was added as a cosponsor of S. Res. 401, supra.

S. RES. 404

At the request of Mr. CRAIG, his name was added as a cosponsor of S. Res. 404, a resolution designating August 9, 2004, as ''Smokey Bear's 60th Anniversary''.

S. RES. 407

At the request of Mr. BIDEN, the names of the Senator from Kansas (Mr. BROWNBACK), the Senator from Vermont (Mr. LEAHY) and the Senator from Nebraska (Mr. HAGEL) were added as cosponsors of S. Res. 407, a resolution designating October 15, 2004, as ''National Mammography Day''.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. LINCOLN:

S. 2689. A bill to amend the Internal Revenue Code of 1986 to replace the recapture bond provisions of the low income housing tax credit program; to the Committee on Finance.

Mrs. LINCOLN. Mr. President, I am introducing legislation today to correct a problem that is impairing the efficiency of the Low-Income Housing Tax Credit program. As my colleagues know, the low-income housing credit has been a remarkably successful incentive for encouraging investment in residential rental housing for low-income families. Under Section 42 of the Internal Revenue Code, a tax credit is available for investment in affordable housing. The credit is claimed annually over a period of ten years. Qualified residential rental projects must be rented to lower-income households at controlled rents and satisfy a number of other requirements throughout a prescribed compliance period which is generally 15 years from the first taxable year the credit is claimed.

Today, virtually all of the equity for housing credit investments comes from publicly-traded corporations investing through housing credit funds. An investor wishing to dispose of an interest in housing credit property during its 15-year compliance period is subject to a recapture of housing credits previously claimed unless a bond or U.S. Treasury securities are posted to the Internal Revenue Service. The amount of the bond to be posted is based on the amount of housing credits claimed and the duration remaining in the compliance period. The purpose of the bond is to guarantee to the IRS that it can collect the appropriate recapture tax amount in the event that the property is no longer in compliance with the requirements of the housing credit program.

At the time the housing credit program was enacted in 1986, the drafters of the statute were concerned that owners would claim the benefits of the tax credits and then avoid the continuing compliance requirements by transferring the credits to a straw party with minimal assets that the IRS could go after to collect recapture tax liability. This was a potential concern because housing credits are provided on an accelerated basis in the sense that they are claimed over a ten-year period, while the property must remain in compliance with the targeting rules over a minimum 15-year period.

However, the experience with the housing credit over the past 15 years demonstrates that this concern no longer has any validity. When the housing credit program was enacted, policymakers were thinking in terms of previous affordable housing tax incentives that supported an aggressive

tax shelter market dominated by individual investors. As it turns out, over 99 percent of the investment capital in the housing credit program comes from publicly-traded corporations that pose none of the risks of noncompliance that motivated enactment of the recapture bond rules in the first place. Ironically, sales of individual partnership interests in low-income housing fund public partnerships with more than 35 investors are exempt from the recapture bond rules.

There are also a number of other provisions in Code section 42 that adequately address potential noncompliance. In 1989, Congress added the requirement that all state allocating agencies adopt ''extended use agreements'' to be recorded as restrictive covenants on housing credit properties, which require the property to remain in compliance. In addition, the State allocating agencies were given oversight responsibilities to ensure continued compliance through site inspections and property audits.

The requirement to purchase recapture bonds forces investors to incur unnecessary costs and has produced a complex administrative burden on the IRS. Because bond filings are done building-by-building, and single sales transactions frequently involve hundreds of properties, each with dozens of buildings, bond filings may involve thousands of separate filings. Worse yet, the few remaining surety companies writing this type of business operate in a very inefficient market. Recapture surety bonds are priced in a fashion that does not measure the true risk of non-compliance, but rather relies solely on the credit rating of the company requesting the bond. This is a function of the fact that surety underwriters do not understand the housing credit program in general or the risk of non-compliance in particular. At the same time, the incidence of non-compliance with housing credit program rules is exceedingly rare.

Meanwhile in the aftermath of the September 11th terrorist acts and the spate of corporate accounting scandals that occurred in 2002, the surety market has been in turmoil. Recapture bond premiums, even for highly rated public companies, have more than tripled over the past two years. This has imposed dead weight costs on the housing credit program. By making it more difficult to transfer credit investments, the recapture bond rule impairs the liquidity of housing credit investments, reducing credit prices generally, and undermining the overall efficiency of the program. In the absence of the recapture bond requirement, more dollars would flow into affordable housing itself and less into the higher rate of return that must be paid to investors to compensate for the dead weight costs that the bonds impose on the program.

The IRS recently responded to a series of questions posed about the recapture bond requirement. According to the IRS, between 1997 and 2003, recapture bonds covering approximately $1.8 billion of tax credits have been posted with the Treasury but in the 17 years since the requirement was enacted, the Service has never made a single claim on a recapture bond. That works out to bond premium payments in excess of $150 million to ensure against an event that has never occurred. These costs are unnecessary and are imposing a real drag on the market for investments in housing credit properties.

My bill will solve this problem by repealing the recapture bond requirement effective for disposition of interests in LIHTC properties after the date of enactment. An owner of a building, or interest therein, that has been the subject of a disposition and is still within the remaining 15–year compliance period with respect to such building would be required to submit a report to its former investors when a recapture event with respect to such building occurs. A copy of recapture event forms sent to investors would be required to be filed with the IRS in order to provide the Service with the information necessary to ensure that all recapture liabilities are timely paid.

The general statute of limitations applicable to taxpayers would also be modified so that investors who dispose of a building after the effective date of the legislation would remain liable for any potential recapture liability for a period extending through the compliance period for such building to provide the IRS with additional time to audit the partnership's return to ensure the building's continuing compliance with the credit's requirements. Taxpayers who disposed of a building (or interest therein) prior to the date of enactment would not be required to maintain existing recapture bonds (or other alternative security), but cancellation of existing bonds would trigger an extension of the statute of limitations provided for in the legislation.

These changes will improve the overall efficiency of the housing program and ensure that more dollars actually flow into affordable housing. This is a very important improvement in an otherwise excellent program, and I encourage my colleagues to join with me in cosponsoring this legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD. The legislation is identical to a bill that Congressmen HOUGHTON, JOHNSON, NEAL, and RANGEL have introduced in the House. I also ask unanimous consent to include a copy of a letter from 12 national housing organizations to Chairman BILL THOMAS endorsing the House bill, H.R. 3610.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2689

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. REPEAL OF RECAPTURE BOND RULE.**

(a) IN GENERAL.—Paragraph (6) of section 42(j) of the Internal Revenue Code of 1986 (relating to recapture of credit) is amended to read as follows:

''(6) NO RECAPTURE ON DISPOSITION OF BUILDING (OR INTEREST THEREIN) REASONABLY EXPECTED TO CONTINUE AS A QUALIFIED LOW-INCOME BUILDING.—

''(A) IN GENERAL.—In the case of a disposition of a building or an interest therein, the taxpayer shall be discharged from liability for any additional tax under this subsection by reason of such disposition if it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.

''(B) STATUTE OF LIMITATIONS.—

''(i) EXTENSION OF PERIOD.—The period for assessing a deficiency attributable to the application of subparagraph (A) with respect to a building (or interest therein) during the compliance period with respect to such building shall not expire before the expiration of 3 years after the end of such compliance period.

''(ii) ASSESSMENT.—Such deficiency may be assessed before the expiration of the 3-year period referred to in clause (i) notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.''.

(b) INFORMATION REPORTING.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 of such Code (relating to information concerning transactions with other persons) is amended by inserting after section 6050T the following new section:

**''SEC. 6050U. RETURNS RELATING TO PAYMENT OF LOW-INCOME HOUSING CREDIT REPAYMENT AMOUNT.**

''(a) REQUIREMENT OF REPORTING.—Every person who, at any time during the taxable year, is an owner of a building (or an interest therein)—

''(1) which is in the compliance period at any time during such year, and

''(2) with respect to which recapture is required by section 42(j)

shall, at such time as the Secretary may prescribe, make the return described in subsection (b).

''(b) FORM AND MANNER OF RETURNS.—A return is described in this subsection if such return—

''(1) is in such form as the Secretary may prescribe, and

''(2) contains—

''(A) the name, address, and TIN of each person who, with respect to such building or interest, was formerly an investor in such owner at any time during the compliance period,

''(B) the amount (if any) of any credit recapture amount required under section 42(j), and

''(C) such other information as the Secretary may prescribe.

''(c) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

''(1) the name and address of the person required to make such return and the phone number of the information contact for such person, and

''(2) the information required to be shown on the return with respect to such person.

The written statement required under the preceding sentence shall be furnished on or before March 31 of the year following the calendar year for which the return under subsection (a) is required to be made.

''(d) COMPLIANCE PERIOD.—For purposes of this section, the term 'compliance period'

has the meaning given such term by section 42(i).''.

(2) ASSESSABLE PENALTIES.—

(A) Subparagraph (B) of section 6724(d)(1) of such Code (relating to definitions) is amended by redesignating clauses (xii) through (xviii) as clauses (xiii) through (xix), respectively, and by inserting after clause (xi) the following new clause:

''(xii) section 6050U (relating to returns relating to payment of low-income housing credit repayment amount),''.

(B) Paragraph (2) of section 6724(d) of such Code is amended by striking ''or'' at the end of subparagraph (AA), by striking the period at the end of subparagraph (BB) and inserting '', or'', and by adding after subparagraph (BB) the following new subparagraph:

''(CC) section 6050U (relating to returns relating to payment of low-income housing credit repayment amount).''.

(C) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 of such Code is amended by inserting after the item relating to section 6050S the following new item:

''Sec. 6050U. Returns relating to payment of low-income housing credit repayment amount.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to any liability for the credit recapture amount under section 42(j) of the Internal Revenue Code of 1986 that arises after the date of the enactment of this Act.

(2) SPECIAL RULE FOR LOW-INCOME HOUSING BUILDINGS SOLD BEFORE DATE OF ENACTMENT OF THIS ACT.—In the case of a building disposed of before the date of the enactment of this Act with respect to which the taxpayer posted a bond (or alternative form of security) under section 42(j) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act), the taxpayer may elect (by notifying the Secretary of the Treasury in writing)—

(A) to cease to be subject to the bond requirements under section 42(j)(6) of such Code (as in effect before the enactment of this Act), and

(B) to be subject to the requirements of section 42(j) of such Code (as amended by this Act).

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FEBRUARY 17, 2004.

Hon. WILLIAM M. THOMAS,

*Chairman, House Committee on Ways and Means, Washington, DC.*

DEAR CHAIRMAN THOMAS: We are writing in support of H.R. 3610, legislation introduced by Representatives Amo Houghton, Nancy Johnson, Charles Rangel, and Richard Neal, to repeal the recapture bond rules under section 42(j) of the Low-Income Housing Tax Credit program. We believe that repeal of the recapture bond rules will remove an unnecessary impediment to the transferability of housing credit investments, thereby increasing the overall efficiency of the LIHTC program and ensuring that more private resources wind up in the production of affordable housing in return for federal housing credits.

Our organizations play an active role in support of affordable housing policies. We represent builders, owners, investors, credit agencies, nonprofit housing groups, and capital aggregators, all with extensive experience with the housing credit program. The housing credit program has been a remarkably successful federal initiative that has delivered affordable housing to over a million low and moderate-income households. The program has operated very successfully and has been an efficient means of delivering federal support. But one notable exception that has been of concern to the industry for many years has been the requirement that when an investor disposes of an interest in housing credit property, a recapture bond must be purchased to guarantee payment to the Treasury of any potential recapture tax liability.

We believe this requirement impedes the transferability of credits, reduces investor demand for housing credits, and causes yields to be higher than necessary, which means that fewer federal resources wind up in housing credit properties. More importantly, this requirement imposes a significant and unnecessary cost on the program. While tens of millions of dollars have been expended on recapture bond premiums, the IRS has never collected on a recapture bond in the 17-year history of the LIHTC. Furthermore, we believe there is no public policy rationale for such bonds. The housing credit market is made up almost exclusively of large corporate investors who pose no risk to the Treasury that they will ignore their responsibility to pay a potential recapture tax liability. Indeed, there is no other provision in the Internal Revenue Code that requires taxpayers to post a bond to ensure payment of a potential tax liability. Moreover, noncompliance in the housing credit program is very small. In a recent letter to Reps. Houghton and Johnson, the Internal Revenue Service points out that the typical means of ownership through investment partnerships ''minimizes the risk of recapture from any one project.'' In that letter, the Service goes on to say that ''supporting the bond/security process is administratively difficult.''

H.R. 3610 will correct this situation by removing the requirement that a recapture bond be purchased when there is a disposition of interests in LIHTC properties. The legislation replaces this unnecessary and expensive requirement with two new provisions that will improve the ability of the Treasury to collect potential recapture tax liability. First, investors who dispose of an interest in housing credit property would automatically be subject to a longer statute of limitations for any potential recapture tax liability that is identified in the future in connection with their ownership of housing credits. Second, improved information reporting would be required whereby the owner of housing credit property would be required to notify former investors and the IRS of any recapture liability that arises in connection with the period that the former investor owned an interest in the property.

We believe these changes will improve the administration of the housing credit program, better protect the interests of the Treasury, and result in more private dollars going into the development of affordable housing.

National Housing Conference; National Association of Home Builders; Affordable Housing Investors Council; National Multi Housing Council; National Leased Housing Association; National Association of Affordable Housing Lenders; National Association of State and Local Equity Funds; Affordable Housing Tax Credit Coalition; Local Initiatives Support Corporation/National Equity Fund; The Enterprise Foundation/ Enterprise Social Investment Corporation; Council for Affordable and Rural Housing; National Association of Local Housing Finance Agencies.

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By Mr. JEFFORDS (for himself, Mr. SARBANES, and Mrs. FEINSTEIN):

S. 2692. A bill to authorize the Secretary of the Department of Housing and Urban Development to make grants to States for affordable housing for low-income persons, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. JEFFORDS. Mr. President, I am pleased today to introduce the Affordable Housing Preservation Act of 2004, along with my colleagues, Senators SARBANES and FEINSTEIN. This bill provides matching Federal funds to States and localities seeking help to acquire and rehabilitate affordable housing that would otherwise be lost from the affordable housing inventory.

Affordable housing is facing a funding crisis. Across the country, the administration's proposed $1.6 billion budget cuts for Section 8, which serves nearly 3.5 million low-income households nationwide, would seriously undermine the availability of quality affordable housing. In Vermont, there are 6,080 authorized vouchers available this year. But with the proposed budget cut, Vermont could lose more than 700 vouchers next year alone. That's a loss of $4 million for housing assistance just in my small State. Over the next five years, it is estimated that Vermont could lose as many as 1,770 housing vouchers.

Affordable housing is a basic and critical need in every town and city, and these cuts are as indefensible as they are damaging. Cutting affordable housing is not about apartments and houses. It is about individuals and families, including our seniors, not having a safe and affordable place to call home. I have joined with many of my colleagues to protest these cuts.

The bill I am introducing today, the Affordable Housing Preservation Act of 2004, represents an effort to complement the good work being done throughout the country on Section 8 initiatives, and it strives to preserve existing affordable housing. Specifically, this bill would conserve federally subsidized housing units by providing matching grants to States and localities, seeking to preserve privately owned, affordable housing.

The Secretary of Housing and Urban Development (HUD) would make determinations for the grants based on a number of factors, including the number of affordable housing units at risk at being lost and the local market conditions in which displaced residents would have to find comparable new housing options. These funds would make a great deal of difference in keeping affordable housing affordable. States and localities could use the funds to acquire or rehabilitate affordable housing. They could use the funds, in part, for administrative and operating expenses. Properties with mortgages insured by HUD, Section 8 project-based assisted housing, and properties that are being purchased by residents would all be eligible for the matching grant funds. I believe that flexibility with the funding would make this program more efficient and cost effective, and, most importantly, more helpful to the recipients themselves.

Over the past several months, I have heard from many of my constituents who are genuinely concerned about Vermonters who are threatened with the loss of housing. This bill would give State and local housing authorities another tool to keep people in their homes. I believe we must act now to preserve our existing stock of affordable housing.

I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2692

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

This Act may be cited as the ''Affordable Housing Preservation Act of 2004''.

**SEC. 2. MATCHING GRANT PROGRAM FOR AFFORDABLE HOUSING PRESERVATION.**

(a) FINDINGS AND PURPOSES.—

(1) FINDINGS.—Congress finds that—

(A) the availability of low-income housing rental units has declined nationwide in the last several years;

(B) as rents for low-income housing increase and the development of new units of affordable housing decreases, there are fewer privately owned, federally assisted affordable housing units available to low-income individuals in need;

(C) the demand for affordable housing far exceeds the supply of affordable housing, as evidenced by recent studies;

(D) the efforts of nonprofit organizations have significantly preserved and expanded access to low-income housing;

(E) a substantial number of existing federally assisted or federally insured multifamily properties are at risk of being lost from the affordable housing inventory of the Nation through market rate conversion, deterioration, or demolition;

(F) it is in the interest of the Nation to encourage transfer of control of such properties to competent national, regional, and local nonprofit entities and intermediaries, the missions of which involve maintaining the affordability of such properties;

(G) such transfers may be inhibited by a shortage of such entities that are appropriately capitalized; and

(H) the Nation would be well served by providing assistance to such entities to aid in accomplishing this purpose.

(2) PURPOSES.—The purposes of this section are—

(A) to continue the partnerships among the Federal Government, State and local governments, nonprofit organizations, and the private sector in operating and assisting housing that is affordable to low-income persons and families;

(B) to promote the preservation of affordable housing units by providing matching grants to States and localities that have developed and funded programs for the preservation of privately owned housing that is affordable to low-income families and persons; and

(C) to minimize the involuntary displacement of tenants who are currently residing in such housing, many of whom are elderly or disabled persons and families with children.

(b) DEFINITIONS.—In this section:

(1) CAPITAL EXPENDITURES.—The term ''capital expenditures'' includes expenditures for acquisition and rehabilitation.

(2) CONSORTIUM.—The term ''consortium'' means a group of geographically contiguous localities that jointly submit an application under subsection (d).

(3) ELIGIBLE AFFORDABLE HOUSING.—The term ''eligible affordable housing'' means housing that—

(A) consists of more than 4 dwelling units;

(B) is insured or assisted under a program of the Department of Housing and Urban Development or the Department of Agriculture under which the property is subject to limitations on tenant rents, rent contributions, or incomes; and

(C) is at risk, as determined by the Secretary, of termination of any of the limitations referred to in subparagraph (B).

(4) ELIGIBLE ENTITIES.—The term ''eligible entities'' means any entity that meets the requirements of subsection (e)(6) and the rules issued under that subsection.

(5) LOCALITY.—The term ''locality'' means a city, town, township, county, parish, village, or other general purpose political subdivision of a State, or a consortium thereof.

(6) LOW-INCOME AFFORDABILITY RESTRICTION.—The term ''low-income affordability restriction'' means, with respect to a housing project, any limitation imposed by law, regulation, or regulatory agreement on rents for tenants of the project, rent contributions for tenants of the project, or income-eligibility for occupancy in the project.

(7) LOW-INCOME FAMILIES; VERY LOW-INCOME FAMILIES.—The terms ''low-income families'' and ''very low-income families'' have the meanings given such terms in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)).

(8) PROJECT-BASED ASSISTANCE.—The term ''project-based assistance'' has the same meaning as in section 16(c) of the United States Housing Act of 1937 (42 U.S.C. 1437n(c)), except that the term includes assistance under any successor programs to the programs referred to in that section.

(9) QUALIFIED LIMITED LIABILITY COMPANY.—The term ''qualified limited liability company'' means a limited liability company with respect to which a credit is allowed under section 42 of the Internal Revenue Code of 1986 with respect to the company's qualified basis (as defined in section 42 (c)(1) of such Code), in a qualified low-income building (as defined in section 42(c)(2) of such Code) for which grant funds received under this section shall be used.

(10) QUALIFIED PARTNERSHIP.—The term ''qualified partnership'' means a limited partnership with respect to which a credit is allowed under section 42 of the Internal Revenue Code of 1986 with respect to the partnership's qualified basis (as defined in section 42(c)(1) of such Code) in a qualified low-income building (as defined in section 42(c)(2) of such Code) for which grant funds received under this section shall be used.

(11) SECRETARY.—The term ''Secretary'' means the Secretary of the Department of Housing and Urban Development.

(12) STATE.—The term ''State'' means each of the several States of the United States and the District of Columbia.

(c) AUTHORITY TO MAKE GRANTS.—The Secretary shall, to the extent that amounts are made available in advance under subsection (k), award grants under this section to States and localities for low-income housing preservation and promotion.

(d) APPLICATIONS.—

(1) IN GENERAL.—Any State or locality that seeks a grant under this section shall submit an application (through appropriate State and local agencies) to the Secretary.

(2) CONTENTS.—Each application submitted pursuant to paragraph (1) shall contain any information and certifications necessary for the Secretary to determine who is eligible to receive a grant under this section.

(e) USE OF GRANTS.—

(1) ELIGIBLE USES.—

(A) IN GENERAL.—Grants awarded under this section may be used by States and localities only for the purposes of providing assistance—

(i) for acquisition, rehabilitation, capital expenditures, and related development costs for a housing project that meets the requirements of paragraph (2), (3), (4), or (5); or

(ii) to eligible entities under paragraph (6) for—

(I) operational, working capital, and organizational expenses; and

(II) predevelopment activities to acquire eligible affordable housing for the purpose of ensuring that the housing will remain affordable, as the Secretary considers appropriate, for low-income or very low-income families.

(B) USE AGREEMENT.—A project receiving assistance under this paragraph shall be subject to an agreement (binding on any subsequent owner of such project) that ensures that the project will continue to operate, for a period of not less than 50 years after the date on which any assistance is made available under this paragraph, in a manner that will provide rental housing on terms at least as advantageous to existing and future tenants as the terms required by any program under which the project, if offered, was eligible for assistance, subject to available appropriations.

(C) SERVICE OF UNDER-SERVED AND RURAL AREAS.—States receiving funds under this section shall ensure that, to the maximum extent practicable, that projects in underserved and rural areas in that State receive assistance.

(2) PROJECTS WITH HUD-INSURED MORTGAGES.—A project meets the requirements of this paragraph if the project is financed by a loan or mortgage that is—

(A) insured or held by the Secretary under section 221(d)(3) of the National Housing Act (12 U.S.C. 1715l(d)(3)) and receiving loan management assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) due to a conversion from section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s);

(B) insured or held by the Secretary and bears interest at a rate determined under the proviso of section 221(d)(5) of the National Housing Act (12 U.S.C. 1715l(d)(5)); or

(C) insured, assisted, or held by the Secretary or a State or State agency under section 236 of the National Housing Act (12 U.S.C. 1715z–1).

(3) PROJECTS WITH SECTION 8 PROJECT-BASED ASSISTANCE.—A project meets the requirements of this paragraph if the project is subject to a contract for project-based assistance.

(4) PROJECTS PURCHASED BY RESIDENTS.—A project meets the requirements of this paragraph if—

(A) the project is or was eligible low-income housing (as defined in section 229 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4119)) or is or was a project assisted under section 613(b) of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4125);

(B) the project has been purchased by a resident council or resident-approved nonprofit organization for the housing, or is approved by the Secretary for such purchase, for conversion to homeownership housing under a resident homeownership program meeting the requirements of section 226 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4116); and

(C) the owner of the project has entered into binding commitments (applicable to any subsequent owner) to extend—

(i) project-based assistance for not less than 15 years (beginning on the date on which assistance is made available for the project by the State or locality under this section); and

(ii) any low-income affordability restrictions applicable to the project in connection with that assistance.

(5) RURAL RENTAL ASSISTANCE PROJECTS.—A project meets the requirements of this paragraph if—

(A) the project is a rural rental housing project financed under section 515 of the Housing Act of 1949 (42 U.S.C. 1485), or a farm labor housing development financed under section 514 of the United States Housing Act of 1949 (42 U.S.C. 1484); and

(B) the restriction on the use of the project (as required under section 502 of the Housing Act of 1949 (42 U.S.C. 1472)) will expire not later than 12 months after the date on which assistance is made available for the project by the State or locality under this subsection.

(6) ELIGIBLE ENTITIES.—

(A) IN GENERAL.—The Secretary shall establish, by regulation, standards for eligible entities under this subsection.

(B) REQUIREMENTS.—An eligible entity shall—

(i) be a nonprofit organization (as defined in section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704)), or a qualified limited liability company or a qualified partnership whose managing member or general partner, respectively, is—

(I) a nonprofit organization; or

(II) a for-profit entity that is wholly owned by an eligible non-profit organization;

(ii) have among its purposes, maintaining the affordability to low-income or very low-income families of multifamily properties that are at risk of loss from the inventory of housing that is affordable to low-income or very low-income families; and

(iii) demonstrate to the Secretary—

(I) the need for the types of assistance described under paragraph (1)(A)(ii);

(II) experience in providing assistance described under that paragraph; and

(III) its ability to provide the assistance described under that paragraph.

(7) FUNDING REQUIREMENTS.—

(A) OPERATING SUPPORT.—Each State and locality awarded a grant under this section shall transfer at least 5 percent, but no more than 10 percent, of such grant to eligible entities for the purposes described under paragraph (1)(A)(ii)(I).

(B) NONPROFIT PURCHASES.—Each State and locality awarded a grant under this section shall transfer at least 15 percent of such grant to eligible entities for the purposes described under paragraph (1)(A)(ii)(II).

(8) RETURN OF UNUSED FUNDS.—If any amount of a grant awarded to a State or locality under this section has not been obligated 3 years after the grant is awarded, such amount shall be returned to the Secretary to be redistributed in accordance with this section the following fiscal year.

(9) ADMINISTRATIVE COSTS.—A State or locality that is awarded a grant under this section may use no more than 10 percent of such grant for costs associated with the administration of the grant.

(f) AMOUNT OF STATE AND LOCAL GRANTS.—

(1) IN GENERAL.—Subject to paragraph (3) and subsection (g), in each fiscal year, the Secretary shall award to each State and locality approved for a grant under this section a grant in an amount based upon the proportion of the need for assistance of that State or locality under this section (as determined by the Secretary in accordance with paragraph (2)) to the aggregate need among all States and localities approved for assistance under this section for that fiscal year.

(2) DETERMINATION OF NEED.—In determining the proportion of the need of a State or locality under paragraph (1), the Secretary shall consider—

(A) the number of units in projects in the State or locality that are eligible for assistance under subsection (e)(1)(A)(i) that are, due to market conditions or other factors, at risk for prepayment, opt-out, or otherwise at risk of being lost to the inventory of affordable housing; and

(B) the difficulty that residents of projects in the State or locality that are eligible for assistance under subsection (e)(1)(A)(i) would face in finding adequate, available, decent, comparable, and affordable housing in neighborhoods of comparable quality in the local market, if those projects were not assisted by the State or locality under subsection (e)(1)(A)(i).

(3) LIMITATIONS.—

(A) MANDATORY ALLOCATION.—In any fiscal year, of the total amount appropriated under subsection (k)—

(i) 40 percent shall be allocated for grants to States; and

(ii) 60 percent shall be allocated for grants to localities.

(B) MINIMUM GRANT AMOUNT.—Notwithstanding subsection (g), a State receiving a grant under this section shall receive no less than .4 percent of the total amount appropriated under subsection (k) in any fiscal year.

(g) MATCHING REQUIREMENT.—

(1) IN GENERAL.—Except as provided under paragraph (2), a grant under this section to a State or locality for any fiscal year may not exceed an amount that is twice the amount that the State or locality certifies, as the Secretary shall require, that the State or locality will contribute for such fiscal year, or has contributed since January 1, 2003, from non-Federal sources for the purposes described in subsection (e)(1).

(2) LIMITATIONS.—Paragraph (1) shall not apply to any amounts to be used by a State or locality for—

(A) administrative costs under subsection (e)(9); and

(B) operating support and working capital of nonprofit organizations under subsection (e)(7)(A).

(3) TREATMENT OF PREVIOUS CONTRIBUTIONS.—Any portion of amounts contributed after January 1, 2003, that are counted for the purpose of meeting the requirement under paragraph (1) for a fiscal year may not be counted for that purpose for any subsequent fiscal year.

(4) TAX CREDITS AND PRIVATE ACTIVITY BONDS.—Fifty percent of the annual amount of tax credits allocated to the project under section 42 of the Internal Revenue Code of 1986, or proceeds from private activity bonds issued for qualified residential rental projects under section 142 of that Code, shall be considered funds from non-Federal sources for purposes of paragraph (1).

(h) TREATMENT OF SUBSIDY LAYERING REQUIREMENTS.—Neither subsection (g) nor any other provision of this section may be construed to prevent the use of tax credits allocated under section 42 of the Internal Revenue Code of 1986, in connection with housing assisted with amounts from a grant awarded under this section, to the extent that such use is in accordance with section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545(d)) and section 911 of the Housing and Community Development Act of 1992 (42 U.S.C. 3545 note).

(i) REPORTS.—

(1) REPORTS TO SECRETARY.—Not later than 90 days after the last day of each fiscal year, each State and locality that receives a grant under this section during that fiscal year shall submit to the Secretary a report on the housing projects and eligible entities assisted with amounts made available under the grant.

(2) REPORTS TO CONGRESS.—Based on the reports submitted under paragraph (1), the Secretary shall annually submit to Congress a report on the grants awarded under this section during the preceding fiscal year and the housing projects assisted and eligible entities with amounts made available under those grants.

(j) REGULATIONS.—Not later than 6 months after the date of enactment of this Act, the Secretary shall issue regulations to carry out this section.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under this section such sums as may be necessary for each of fiscal years 2005, 2006, 2007, 2008, and 2009.

**SEC. 3. PRESERVATION PROJECTS.**

Section 524(e)(1) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended by striking ''amounts are specifically'' and inserting ''sufficient amounts are''.

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By Mr. BINGAMAN:

S. 2694. A bill to amend title XVIII of the Social Security Act to provide for the automatic enrollment of medicaid beneficiaries for prescription drug benefits under part D of such title, and for other purposes; read the fist time.

Mr. BINGAMAN. Mr. President, today I am reintroducing the Medicare Assurance of Prescription Transition Assistance Act of 2004. It is my hope that this will be put on the Senate Calendar so it can be considered under rule XIV.

Let me give a little background about what this legislation is intended to correct.

As all of us know, this last year we passed a major revision, a major amendment to the Medicare Act. The Medicare Act was passed in 1965. In this last year, the prescription drug bill has been added to it. That was a controversial piece of legislation which I wound up opposing in its final form. I supported the version we passed through the Senate initially. I opposed the version that finally came from the conference and was sent to the President for signature.

But there was one part of that prescription drug legislation that contained a very real benefit for a lot of low-income Americans. That is the $600 subsidy that was made available this year and again next year for Medicare recipients with incomes in this category that allowed them to take advantage of the benefit.

The legislation I am introducing today will provide simply that CMS automatically enroll many of these low-income Medicare seniors and people with disabilities into this prescription drug card in order that they get the benefit of the discount card. Of course, that benefit is hard to quantify. They would get that benefit, but more importantly, they would get access to

this $600 subsidy this year and another $600 subsidy next year, which would go against the cost of prescription drugs they incur during those 2 years.

Underscoring the need for this legislation, yesterday Dr. Mark McClellan, the Administrator of the Centers for Medicare and Medicaid Services, or CMS, testified before the Senate Special Committee on Aging that only 1 million of the more than 7 million low-income Medicare beneficiaries who are eligible for the $600 subsidy under the Medicare prescription drug card are currently enrolled.

This chart makes that point very clearly. The title of this chart is ''Low Enrollment Plagues Prescription Drug Plan.'' This first bullet states that 7 million low-income Medicare beneficiaries are eligible for this $600 subsidy. The number of low-income beneficiaries that CMS projected would actually enroll would be 5 million. So 5 million of the 7 million were supposed to enroll. In fact, the number of low-income beneficiaries who have enrolled turns out to be 1 million.

So there are 6 million Americans eligible for the $600 transition assistance under the Medicare prescription drug bill who are not receiving any help. In other words, 14 percent of those who are eligible for this $600 subsidy are actually getting assistance at the present time. Unfortunately, many of those seniors who are eligible live in my home State of New Mexico, and I am very anxious that we provide this benefit to them since it is a part of the law.

The President and the leadership in the Senate have vowed to bottle up any legislation that would reopen the Medicare prescription drug bill at this time, or before the end of this Congress. Unfortunately, that would include bills such as the one I am reintroducing today, which is really intended to ensure that the people who are eligible for the limited benefit provided under this bill actually receive that benefit.

If we are serious about trying to provide assistance to our Nation's most vulnerable low-income seniors and people with disabilities, then we should undertake the rather straightforward but significant step that is called for in this legislation, and that is automatically enrolling those who are eligible for the $600 subsidy into the discount drug card program.

Considering that it is unclear whether the savings offered by the drug discount card itself will amount to much, and that is just hard to quantify, frankly, the main benefit is not the discount card itself; it is the $600 credit which is available to low-income individuals.

Specifically, the $600 is available to any individual whose income is less than $12,569 per year or any married couple whose income is less than $16,862 per year. For those Medicare savings program beneficiaries who get cost-sharing assistance through Medicaid because they have incomes below 135 percent of poverty but are not receiving prescription drug coverage, they clearly meet the income criteria under the act and their automatic enrollment is the only way to ensure they will receive the $600 subsidy that those of us in Congress intended they receive.

In fact, when the prescription drug bill was passed, the administration claimed that 65 percent of those eligible for the $600 transitional assistance would actually be enrolled.

According to the Centers for Medicare and Medicaid Services, or CMS, the agency expected 5 million people of the 7 million—again, as is stated on this chart—including 29,000 of the estimated 45,000 in my home State of New Mexico, would actually enroll. Under the CMS assumptions, those beneficiaries combined would save $5 billion nationally, or $35 million in my home State of New Mexico, over this 2-year period.

Much of that savings is not going to be realized by those seniors unless we pass the legislation I am introducing today.

Part of the explanation for the low enrollment is the poor advertising campaign that the General Accounting Office has criticized and with which we are generally familiar. This poor advertising campaign included running ads in Capitol Hill newspapers such as Roll Call and the Hill. Unfortunately, most of the low-income seniors in my State do not subscribe to either Roll Call or the Hill. In fact, they do not know those publications exist.

According to a national survey by the Kaiser Family Foundation, only 18 percent of senior citizens are even aware that the low-income transitional assistance program was included in the prescription drug bill. So it is hard to believe that 65 percent of those who are eligible will enroll when less than one-fifth of them even know the program exists.

Fortunately, CMS has already laid the groundwork for this automatic enrollment. Two months ago, the agency issued guidance for how State pharmacy assistance programs can automatically enroll their members who have incomes below 135 percent of poverty in the low-income assistance benefit. Those enrollees continue to represent the bulk of those who have enrolled and they remain the model for how to ensure that low-income beneficiaries get the prescription drug assistance they need.

CMS can take this additional step, which I am calling for in this legislation, to automatically enroll MSP members who do not have prescription drug coverage. I believe CMS has the authority to take the step on its own right now, but the legislation I have reintroduced today would clarify the law in this regard and would ensure that low-income seniors and people with disabilities actually receive this transitional assistance as promised by the administration and the Congress.

As the Medicare Rights Center has asked: Given their definite eligibility and clear need for help to pay for their prescription drugs, why not save these people and the Government the hassle of application and automatically enroll them?

That is exactly the right question to be asked. There are a number of low-income seniors and people with disabilities who are very sick, who have cognitive and mental illnesses and do not have access to or feel comfortable with the use of the Internet. Many will wrongly slip through the cracks and fail to get the $600 subsidy that could benefit them substantially this year and next year. In such cases, if an individual has not enrolled for whatever reason, it begs the question as to what choice automatic enrollment would take away at that point.

It is not enough to say, look, we believe these seniors have a choice of a great many discount cards and we do not want to prejudge that for them. The truth is, most of the people I am talking about are completely unaware that there is such a thing as a drug discount card or that there is such a thing as a $600 subsidy for which they could qualify. This lack of knowledge on their part is through no fault of their own and we should do all we can, and CMS should do all it can, to get them enrolled so they can benefit from this $600 subsidy. Either CMS or the States should take the affirmative step of automatically enrolling these individuals in the program. If we fail to assist them in this manner, what is really lost is not the choice that they might have between one card or another but the $1,200 in real prescription drug assistance that they do today qualify for and that they should be receiving.

As a Kaiser Family Foundation study last year indicated, Medicare beneficiaries with no drug coverage were nearly three times more likely than people with drug coverage to forgo needed prescription drugs. While CMS has estimated that 65 percent of the low-income beneficiaries would sign up for the $600 subsidy, by any measure signing up just 14 percent of these beneficiaries can only be viewed as a major failure. It has not been viewed as that so far either by the administration or by the Congress.

Once again, I call on the administration to take this important step on its own and enroll these individuals for this benefit. In light of the fact they have failed to do so, despite several calls from me and other Members of Congress for them to do so, I am reintroducing this bill, and I hope the Senate leadership will bring it to the floor for immediate action.

There is over $1 billion of prescription drug assistance for over 1 million of our Nation's most vulnerable citizens at stake. It is time for the Senate to pass this bill.

Mr. President, I ask unanimous consent that the text of the legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2694

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act, may be cited as the ''Medicare Assurance of Rx Transitional Assistance Act of 2004''.

**SEC. 2. AUTOMATIC ENROLLMENT OF MEDICAID BENEFICIARIES ELIGIBLE FOR MEDICARE PRESCRIPTION DRUG BENEFITS.**

(a) AUTOMATIC ENROLLMENT OF BENEFICIARIES RECEIVING MEDICAL ASSISTANCE FOR MEDICARE COST-SHARING UNDER MEDICAID.—Section 1860D–14(a)(3)(B)(v) (42 U.S.C. 1395w–114(a)(3)(B)(v)) is amended to read as follows:

''(v) TREATMENT OF MEDICAID BENEFICIARIES.—Subject to subparagraph (F), the Secretary shall provide that part D eligible individuals who are—

''(I) full-benefit dual eligible individuals (as defined in section 1935(c)(6)) or who are recipients of supplemental security income benefits under title XVI shall be treated as subsidy eligible individuals described in paragraph (1); and

''(II) not described in subclause (I), but who are determined for purposes of the State plan under title XIX to be eligible for medical assistance under clause (i), (iii), or (iv) of section 1902(a)(10)(E), shall be treated as being determined to be subsidy eligible individuals described in paragraph (1).''.

(b) ASSURANCE OF TRANSITIONAL ASSISTANCE UNDER DRUG DISCOUNT CARD PROGRAM.—

(1) IN GENERAL.—Section 1860D–31(b)(2)(A) of the Social Security Act (42 U.S.C. 1395w141(b)(2)(A)) is amended by adding at the end the following new sentence: ''Subject to subparagraph (B), each discount card eligible individual who is described in section 1860D–14(a)(3)(P)(v) shall be considered to be a transitional assistance eligible individual.''.

(2) AUTOMATIC ENROLLMENT OF MEDICAID BENEFICIARIES.—Section 1860D–31(c)(1) of the Social Security Act (42 U.S.C. 1395w–141(c)(1)) is amended by adding at the end the following new subparagraph:

''(F) AUTOMATIC ENROLLMENT OF CERTAIN BENEFICIARIES.—

''(1) IN GENERAL.—Subject to clause (ii), the Secretary shall—

''(I) enroll each discount card eligible individual who is described in section 1860D–14(a)(3)(13)(v), but who has not enrolled in an endorsed discount card program as of August 15, 2004, in an endorsed discount, card program selected by the Secretary that serves residents of the State in which the individual resides; and

''(II) notwithstanding paragraphs (2) and (3) of subsection (f), automatically determine that such individual is a transitional assistance eligible individual (including whether such individual is a special transitional assistance eligible individual) without requiring any self-certification or subjecting such individual to any verification under such paragraphs.

''(ii) OPT-OUT.—The Secretary shall not enroll an individual under clause (i) if the individual notifies the Secretary that such individual does not wish to be enrolled and be determined to be a transitional assistance eligible individual under such clause before the individual is so enrolled.''.

(3) NOTICE OF ELIGIBILITY FOR TRANSITIONAL ASSISTANCE.—Section 1860D–31(d) of the Social Security Act (42 U.S.C. 1395w–141(4)) is amended by adding at the end the following new paragraph:

''(4) NOTICE OF ELIGIBILITY TO MEDICAID BENEFICIARIES.—Not later than July 15, 2004, each State or the Secretary (at the option of each State) shall mail to each discount card eligible individual who is described in section 1860D14(a)(3)(B)(v), but who has not enrolled in an endorsed discount card program as of July 1, 2004, a notice stating that—

''(A) such individual is eligible to enroll in an endorsed discount card program and to receive transitional assistance under subsection (g);

''(B) if such individual does not enroll before August 15, 2004, such individual will be automatically enrolled in an endorsed discount card program selected by the Secretary unless the individual notifies the Secretary that such individual does not wish to be so enrolled,

''(C) if the individual is enrolled in an endorsed discount card program during 2004, the individual will be permitted to change enrollment under subsection (c)(1)(C)(ii) for 2005; and

''(D) there is no obligation to use the endorsed discount card program or transitional assistance when purchasing prescription drugs.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2071).

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By Mr. SPECTER:

S. 2695. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to expand the definition of firefighter to include apprentices and trainees, regardless of age or duty limitations; read the first time.

Mr. SPECTER. Mr. President, I seek recognition today to introduce the Christopher Kangas Fallen Firefighter Apprentice Act, a bill designed to correct a flaw in the current definition of ''firefighter'' under the Public Safety Officer Benefits Act.

On May 4, 2002, 14-year-old Christopher Kangas was struck by a car and killed while he was riding his bicycle in Brookhaven, PA. The local authorities later confirmed that Christopher was out on his bike that day for an important reason: Chris Kangas was a junior firefighter, and he was responding to a fire emergency.

Under Pennsylvania law, 14- and 15-year-olds such as Christopher are permitted to serve as volunteer junior firefighters. While they are not allowed to operate heavy machinery or enter burning buildings, the law permits them to fill a number of important support roles, such as providing first aid. In addition, the junior firefighter program is an important recruitment tool for fire stations throughout the Commonwealth. In fact, prior to his death Christopher had received 58 hours of training that would have served him well when he graduated from the junior program.

It is clear to me that Christopher Kangas was a firefighter killed in the line of duty. Were it not for his status as a junior firefighter and his prompt response to a fire alarm, Christopher would still be alive today. Indeed, the Brookhaven Fire Department, Brookhaven Borough, and the Commonwealth of Pennsylvania have all recognized Christopher as a fallen public safety officer and provided the appropriate death benefits to his family.

Yet while those closest to the tragedy have recognized Christopher as a fallen firefighter, the Federal Government has not. The Department of Justice announced that Christopher Kangas was not a ''firefighter,'' and therefore not a ''public safety officer'' for purposes of the Public Safety Officer Benefits Act. The DOJ based its determination on an arbitrarily narrow definition of ''firefighter,'' deciding that the only people who qualify as firefighters are those who play the starring role of spraying water on a fire or entering a burning building. According to this definition, those who play the essential supporting roles of directing traffic, performing first aid, or dispatching fire vehicles apparently don't count.

Any firefighter will tell you that there are many important roles to play in fighting a fire beyond operating the hoses and ladders. Firefighting is a team effort, and everyone in the Brookhaven Fire Department viewed young Christopher as a full member of their team.

As a result of this DOJ determination, Christopher's family will not receive a $267,000 Federal line-of-duty benefit. In addition, Christopher will be barred from taking his rightful place on the National Fallen Firefighters Memorial in Emmitsburg, MD. For a young man who dreamed of being a firefighter and gave his life rushing to a fire, keeping him off of the memorial is a particularly cruel blow.

The bill I introduce today will ensure that the Federal Government will recognize Christopher Kangas and others like him as firefighters. The bill clarifies that all firefighters will be recognized as such ''regardless of age, status as an apprentice or trainee, or duty restrictions imposed because of age or status as an apprentice or trainee.'' The bill applies retroactively back to May 4, 2002 so that Christopher can benefit from it.

My bill is a companion to H.R. 4472, introduced by Congressman CURT WELDON, Congressman WELDON, who is himself a former fireman and fire chief, is chairman of the Congressional Fire Services Caucus. There is no one in Congress better suited to understand this situation than Congressman WELDON, and I am honored to join him in the effort to right this wrong.

I am submitting together with this bill a request under Senate rule XIV that the bill be placed directly on the Senate calendar and not be referred to committee. This is a noncontroversial, technical bill. I hope that my colleagues will join me in ensuring its speedy passage into law.

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By Mrs. HUTCHISON:

S. 2697. A bill to authorize the President to posthumously award a gold medal on behalf of the Congress to the

seven members of the crew of the space shuttle *Columbia* in recognition of their outstanding and enduring contributions to the Nation; to the Committee on Banking, Housing, and Urban Affairs.

Mrs. HUTCHISON. Mr. President, I rise today to introduce a bill to honor seven individuals who last year made the ultimate sacrifice. The crew of flight STS–107 was tragically lost aboard the space shuttle *Columbia* on February 1, 2003. Debris from the vehicle was found in several cities and towns in my home State of Texas, where memorials will be raised to the mission's memory.

Commander Rick Husband, Pilot William McCool, Payload Specialist Michael Anderson, Mission Specialists Kalpana Chawla, David Brown and Laurel Clark, and Payload Specialist Ilan Ramon, Israel's first astronaut, admirably exemplified our commitment to human space exploration. These men and women labored for years to join the select group of NASA astronauts. Their 16–day mission was dedicated to research in physical, life, and space sciences. They conducted approximately 80 separate experiments comprised of hundreds of samples and tests, for 24 hours a day in alternating shifts. This selfless toil has repeatedly formed the basis of NASA's significant discoveries about our universe.

The *Columbia* crew, by participating in this effort, fully endorsed manned space exploration, which has been among NASA's missions since its inception in 1958. Beginning with NASA's earliest Mercury, Gemini, and Apollo missions which first put men on the moon, to this year's Mars rovers, the benefits of space technology are far-reaching and affect the lives of every American. The work of people like those lost last year has led to myriad tangible benefits here on Earth, such as the life-saving CAT Scan. This very American desire to cross frontiers and explore our surroundings drives critical innovation and development, and it does not exist without people like those we commemorate today.

I believe these cherished husbands and wives, sons, daughters, parents, and friends deserve to be counted among another exclusive number. For their bravery, dedication, audacity, and perseverance, these astronauts should be posthumous recipients of the Congressional Gold Medal, which is awarded as the highest expression of national appreciation for distinguished achievements and contributions. According to convention, this measure must be cosponsored by 67 Senators before it can be considered, and I am certain my colleagues hold the *Columbia* crew in the same high regard as I do. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill ordered to be printed in the RECORD, as follows:

S. 2697

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. FINDINGS.**

The Congress makes the following findings:

(1) On Saturday, February 1, 2003, the space shuttle Columbia exploded upon re-entering the atmosphere following a 16-day mission.

(2) Before the Columbia started its tragic descent, the shuttle crew completed some 80 scientific experiments and much of their research data had already been relayed to Houston where it has added to the pool of scientific knowledge.

(3) The Nation pays tribute to the memory of Colonel Rick Husband, Lieutenant Colonel Michael Anderson, Commander Laurel Clark, Captain David Brown, Commander William McCool, Dr. Kapana Chawla, and Ilan Ramon, a colonel in the Israeli air force. The diversity of crew represented the ideals of our Nation.

(4) These seven courageous explorers paid the ultimate price to improve our understanding of the universe, to advance our medical and engineering sciences, to make the Nation safer and more secure, and to keep the United States economy on the cutting edge of technology.

**SEC. 2. CONGRESSIONAL GOLD MEDAL.**

(a) PRESENTATION AUTHORIZED.—The President is authorized, on behalf of the Congress, to award a gold medal of appropriate design to each of the seven crew members of the space shuttle Columbia—

(1) Rick D. Husband;
(2) Michael P. Anderson;
(3) Laurel Clark;
(4) David M. Brown;
(5) William C. McCool;
(6) Kapana Chawla; and
(7) Ilan Ramon.

(b) DESIGN AND STRIKING.—For the purpose of the presentation referred to in subsection (a), the Secretary of the Treasury shall strike a gold medal with suitable emblems, devices, and inscriptions, to be determined by the Secretary.

**SEC. 3. DUPLICATE MEDALS.**

The Secretary may strike and sell duplicates in bronze of the gold medal struck pursuant to section 2 under such regulations as the Secretary may prescribe, and at a price sufficient to cover the cost thereof, including labor, materials, dies, use of machinery, and overhead expenses, and the cost of the gold medal.

**SEC. 4. NATIONAL MEDALS.**

The medals struck under this Act, are national medals for purposes of chapter 51 of title 31, United States Code.

**SEC. 5. FUNDING.**

(a) AUTHORITY TO USE FUND AMOUNTS.—There is authorized to be charged against the United States Mint Public Enterprise Fund an amount not to exceed $30,000 to pay for the cost of the medals authorized by this Act.

(b) PROCEEDS OF SALE.—Amounts received from the sale of duplicate bronze medals under section 3 shall be deposited in the United States Mint Public Enterprise Fund.

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By Mr. GRASSLEY (for himself and Mr. BAUCUS):

S. 2698. A bill to amend title XVIII of the Social Security Act to revoke the unique ability of the Joint Commission for the Accreditation of Healthcare Organizations to deem hospitals to meet certain requirements under the medicare program and to provide for greater accountability of the Joint Commission to the Secretary of Health and Human Services; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, I rise today to speak to an issue that is vitally important—hospital safety. For too long, the Federal Government has not had the appropriate oversight authority to assure safety in our Nation's hospitals.

I am proud to introduce the Medicare Hospital Accreditation Act, bipartisan legislation that will give the Centers for Medicare and Medicaid Services (CMS) the same oversight capacity over hospital accreditation that it has over all other health care accrediting bodies.

The Joint Commission for Accreditation of Health Organizations (JCAHO) is a private, not-for-profit organization. In 1965 Congress granted JCAHO ''deeming authority'' for Medicare certification under Section 1865 of the Social Security Act. This sweeping authority gave hospitals accredited by JCAHO the ability to participate in Medicare with minimal CMS oversight. Since then, JCAHO has accredited most of our Nation's hospitals—over 80 percent in 2002. No other health care accreditation program has had this same statutory exception.

Congress gave JCAHO an important role to detect and correct problems that directly affect the lives of patients in hospitals. Congress, CMS and in turn the American people, rely upon JCAHO's work to ensure the quality and safety in our Nation's hospitals.

JCAHO's own mission claims to continuously improve the safety and quality of care provided to the public through the provision of health care accreditation.

Unfortunately, JCAHO was entrusted with this responsibility without the necessary checks and balances so crucial to a government responsive to the needs of the people it serves.

This GAO report is only the most recent evidence showing problems with the Joint Commission. In June of 1990, the GAO found that CMS, which was then called the Health Care Financing Administration (HCFA), needed to re-evaluate the criteria used to evaluate the JCAHO's survey process and recommended that HCFA establish a means to detect significant differences between state agency and Joint Commission surveys.

In May of 1991, the GAO published a report titled ''Hospitals with Quality-of-Care Problems Need Closer Monitoring'' and recommended that HCFA closely monitor the Joint Commission's follow-up of hospital efforts to correct deficiencies it found related to Medicare conditions of participation.

Then in 1999, the Inspector General for the Department of Health & Human Services also raised serious concerns. The IG looked at how well the Joint Commission identified deficiencies in hospitals and found that the Joint Commission's surveys were not likely to identify patterns of deficient care.

Today's GAO findings are likewise significant. Over the course of 3 years—

between 2000 and 2002—500 hospitals were surveyed by both JCAHO and by a state survey agency on behalf of CMS. According to the GAO, a comparison of these surveys revealed that the state surveys often found serious deficiencies—serious deficiencies that went overlooked or unnoticed by JCAHO.

In fact, the GAO found that out of the 157 hospitals found with serious deficiencies, JCAHO identified only 34. In other words, compared to state surveyors, JCAHO missed hospitals with deficiencies 78 percent of the time.

A hospital that prepared and administered drugs in violation of federal and state laws is just one example of a serious deficiency found by a state agency, but missed by JCAHO in its 2000 survey.

Serious deficiencies found by state agencies but missed by JCAHO represent a pattern of deficient care—not merely isolated incidents. Unlike isolated incidents, a pattern of deficient care raises grave concerns because of the potential to place dozens of lives in danger, involving for example a floor or entire wing where many hospital patients are receiving their care.

Because JCAHO's hospital ''deeming authority'' is statutorily mandated, CMS cannot terminate this authority. Today, we are taking the first step to give CMS the same oversight capability over JCAHO that it has over all other health care accrediting organizations.

This legislation will give CMS the authority and responsibility to hold JCAHO accountable and, if necessary, restrict or remove its hospital accreditation authority. It will bring uniformity to the health care accreditation process and will provide a more effective chain-of-command. JCAHO will have to answer to CMS—as it does in other sectors of health care accreditation.

The GAO recommends that Congress grant CMS greater oversight over JCAHO's hospital accreditation process. CMS agrees. JCAHO agrees. My colleague from across the aisle and across the Capitol, Congressman STARK—who as we speak is introducing the companion bill in the House of Representatives—agrees with this finding.

I urge your support for this much-needed legislation.

Mr. BAUCUS. Mr. President, I rise to call my colleagues' attention to a very important matter—the safety of America's hospitals. This is an issue that affects every State and people of all political beliefs. In an effort to keep American hospitals safe and ensure they provide quality health care, Chairman GRASSLEY and I are introducing the Medicare Hospital Accreditation Act of 2004, which is simultaneously being introduced by our colleagues in the House of Representatives.

As I can attest through personal experience, America's hospitals provide outstanding health care. Every day, thousands of people receive the treatment they need from dedicated and highly competent hospital staffs working in well-run hospitals across the country.

But confidence in our hospitals should not be confused with complacency. Every so often, someone from outside a hospital must come in to each facility and look under the hood, so to speak, to read through patient charts, check clinical practices and to make sure that sprinklers are working and stairways are sound. We have put our trust in accrediting organizations to identify problems in hospitals so that they may be corrected and quality and safety improved.

Most hospitals are accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), which has been accrediting hospitals for over 50 years. When JCAHO accredits a hospital, that hospital is deemed to be in compliance with the conditions of participation for Medicare. As today's report by the Government Accountability Office (GAO) shows us, JCAHO's record of identifying problems in hospitals is far from perfect. Furthermore, the GAO points out that government has little oversight authority over JCAHO's hospital accreditation process. Less oversight authority, in fact, compared to accrediting organizations for other kinds of healthcare facilities.

While the GAO's findings are a reason for concern, the report does not mean that American hospitals are unsafe. But it does send a clear message—one that the Congress and the Administration should heed—that there is room for improvement in identifying problems at hospitals. Given my commitment to keep hospitals as safe as possible, I view the GAO's recommendations as a call to action.

Therefore, I am pleased to join Chairman GRASSLEY in introducing legislation to remove JCAHO's unique status as an accreditation body and to give the Centers for Medicare & Medicaid Services (CMS) the same authority over JCAHO's hospital accreditation that it already has with respect to the accreditation of other healthcare facilities. Putting all accrediting organizations on equal footing will result in better accreditation and better healthcare facilities for everyone. Expanding oversight by CMS of JCAHO's hospital accreditation will help improve the process, keep patients safe and ensure that hospitals continue to perform to our expectations.

The legislation we're introducing today is bipartisan and bicameral. I urge my colleagues to join us in cosponsoring this bill and working together to get it passed.

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By Ms. SNOWE:

S. 2699. A bill to deauthorize a certain portion of the project for navigation, Rockland Harbor, Maine; to the Committee on Environment and Public Works.

Ms. SNOWE. Mr. President, I rise today to introduce legislation that could make the mooring of an historic windjammer fleet in Rockland Harbor a reality by deauthorizing a section of the Federal Navigational Channel that will allow a windjammer wharf to be built. Originally a strong fishing port, Rockland retains its rich marine heritage, and it is one of the fastest growing cities in the Midcoast. Like many of the port cities on the eastern seaboard, Rockland has been forced to confront an assortment of financial and environmental changes, but the city has been able to respond to these challenges in positive and productive ways.

The City of Rockland has hosted the Windjammer fleet since 1955, earning a well-deserved reputation as the Windjammer Capitol of the World. Rockland's Windjammers are now National Historic Landmarks, and as such, are vitally important to both the City and the State. The image of *The Victory Chimes*—a three-masted, gaff-rigged schooner whose National Historic Landmark designation I supported in 1997, and one of five vessels slated to be berthed at the new wharf—graces the 2003 Maine quarter! This beautiful fleet of windjammers symbolizes the great seagoing history of Maine as well as the sense of adventure that we have come to associate so closely with the American experience.

Lermond Cove is perfectly situated in the Rockland Harbor to be the new and permanent home for these cherished vessels. The proposed Windjammer Wharf will also provide a safe harbor from storms, as it is tucked nicely near the Maine State Ferry and Department of Marine Resources piers.

The State of Maine capitalizes on the visual impact of the Windjammers to promote tourism, working waterfronts and the natural beauty that distinguishes our landscape. Over $300,000 is spent yearly by the Maine Windjammer Association to advertise and promote these businesses. Deauthorizing that part of the Federal navigational channel will clearly trigger significant and unrealized economic gains for the region, providing many beneficial dollars to the local area and the State of Maine. According to the Longwood study, which uses a multiplier of 1.5, the economic impact of this spending is 3.8 million dollars a year. Conservatively, the Windjammers spend over 2.5 million a year in the State.

My hope is that the legislation I am introducing today can be included in the Water Resources Development Act (WRDA), S 2554, which has been marked up by the Senate Environment and Public Works Committee and awaits floor action. I want to thank the New England Corps of Engineers for their help in drafting the language and working with the Maine Department of Transportation, which runs the state ferry line, and the Rockland city officials, the Rockland Port District, and the Captains of the Windjammer vessels—Mainers and businesspeople with the vision and commitment we need to complete

Windjammer Wharf and create a permanent home for this historic fleet of windjammers in Rockland Harbor.

My legislation is important to the entire Rockland area, to the economy of my State of Maine, and important as a living history of a long held tradition in the Northeastern part of the country bordering the Atlantic Ocean where eyes have traditionally turned to the sea, fixed on hope and the horizon, and a way of life.

## SUBMITTED RESOLUTIONS

### SENATE RESOLUTION 408—SUPPORTING THE CONSTRUCTION BY ISRAEL OF A SECURITY FENCE TO PREVENT PALESTINIAN TERRORIST ATTACKS, CONDEMNING THE DECISION OF THE INTERNATIONAL COURT OF JUSTICE ON THE LEGALITY OF THE SECURITY FENCE, AND URGING NO FURTHER ACTION BY THE UNITED NATIONS TO DELAY OR PREVENT THE CONSTRUCTION OF THE SECURITY FENCE

Mr. SMITH (for himself, Mr. ALEXANDER, Mr. BOND, Mr. BUNNING, Mr. CHAMBLISS, Mrs. CLINTON, Mr. COLEMAN, Ms. COLLINS, Mr. CORZINE, Mr. CRAPO, Mrs. DOLE, Mr. FITZGERALD, Mr. LIEBERMAN, Mr. LUGAR, Mrs. MURRAY, Mr. SCHUMER, Mr. WYDEN, Mr. DEWINE, Ms. MIKULSKI, and Mr. ALLARD) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 408

Whereas the United Nations General Assembly requested the International Court of Justice to render an opinion on the legality of the security fence being constructed by Israel to prevent Palestinian terrorists from entering Israel;

Whereas, on February 23, 2004, the International Court of Justice commenced hearings on the legality of the security fence;

Whereas, on July 9, 2004, the International Court of Justice issued an advisory opinion that was critical of the legality of the security fence and that accused Israel of violating its international obligations;

Whereas the security fence is a necessary and proportional response to the campaign of terrorism by Palestinian militants;

Whereas, throughout Israel, the West Bank, and Gaza, terrorist groups have sent suicide bombers to murder Israeli civilians in buses, cafes, and places of worship, have used snipers to shoot at Israeli civilians in their homes and vehicles and even in baby carriages, and have invaded homes and seminaries in order to carry out acts of terrorism;

Whereas Palestinian terrorists routinely disguise themselves as civilians, including as pregnant women, hide bombs in ambulances, feign injuries, and sequence bombs to kill rescue workers responding to an initial attack;

Whereas a security fence has existed in Gaza since 1996 and that fence has proved effective at reducing the number of terrorist attacks and prevented many residents of Gaza from crossing into Israel to carry out terrorist attacks;

Whereas, from the onset of the Palestinian campaign of terror against Israel in September 2000, until the start of the construction of the fence in July 2003, Palestinian terrorists based out of the northern West Bank carried out 73 attacks in which 293 Israeli were killed and 1,950 were wounded, and during the period since construction began, from August 2003 through June 2004, only 3 attacks were successfully executed, 2 of which were executed by terrorists coming from areas where the fence was not yet completed;

Whereas this reduction in number of attacks represents a 90 percent decline since construction of the security fence commenced;

Whereas, on June 30, 2004, Israel's High Court of Justice issued a dramatic ruling that supported the need for the security fence to fight terror, but ruled that its route must take into account Palestinian humanitarian concerns, thus reinforcing the central role that the rule of law plays in Israeli society;

Whereas United Nations Security Council Resolution 242 (November 22, 1967) and United Nations Security Council Resolution 338 (October 22, 1973) require negotiated settlement of the Israeli-Palestinian conflict, including the demarcation of final borders and recognition of the right of Israel to ''secure and recognized boundaries'';

Whereas, according to international law and as expressly recognized in Article 51 of the Charter of the United Nations, all countries possess an inherent right to self-defense;

Whereas the security fence and associated checkpoints are crucial to detecting and deterring terrorists among the Palestinian civilian population;

Whereas there is concern that the International Court of Justice is politicized and critical of Israel;

Whereas construction of the security fence does not constitute annexation of disputed territory because the security fence is a temporary measure and does not extend the sovereignty of Israel;

Whereas the security fence is permitted under the Declaration of Principles on Interim Self-Government Arrangements, signed at Washington September 13, 1993, between Israel and the P.L.O. (hereinafter referred to as the ''Oslo Accord'') in which Israel retained the right to provide for security, including the security of Israeli settlers;

Whereas the case regarding the legality of the security fence in the International Court of Justice violates the principles of the Oslo Accord that require that all disputes between the parties be settled by direct negotiations or by agreed-upon methods; and

Whereas the United States, Korea, and India have constructed security fences to separate such countries from territories or other countries for the security of their citizens: Now, therefore, be it

*Resolved,* That the Senate—

(1) recognizes Israel's right of self-defense against Palestinian terrorist attacks, and supports the construction of a security fence, the route of which, with the support of the Government of Israel, takes into account the need to minimize the confiscation of Palestinian land and the imposition of hardships on the Palestinian people;

(2) condemns the decision of the International Court of Justice on the legality of the security fence; and

(3) urges the United States to vote against any further United Nations action that could delay or prevent the construction of the security fence and to engage in a diplomatic campaign to persuade other countries to do the same.

### SENATE RESOLUTION 409—ENCOURAGING INCREASED INVOLVEMENT IN SERVICE ACTIVITIES TO ASSIST SENIOR CITIZENS

Mr. BAYH submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 409

Whereas approximately 13,000,000 individuals in the United States have serious long-term health conditions that may force them to seek assistance with daily tasks;

Whereas 56 percent of the individuals in the United States with serious long-term health conditions are age 65 or older;

Whereas the percentage of the population over the age of 65 is expected to rise from 13 percent in 2004 to 20 percent in 2020;

Whereas the number of individuals entering the workforce and the number of health care professionals with geriatric training are not keeping pace with the changing demographics;

Whereas medicaid paid for 51 percent of total long-term care spending in 2002, as compared to the 15 percent of total long-term care spending paid by medicare;

Whereas the long-term care system of the United States, funded largely with Federal and State dollars, will have difficulty supporting the coming demographic shift;

Whereas 80 percent of seniors live at home or in community-based settings;

Whereas 3,900,000 people of the United States who are over age 65 receive long-term care assistance in home and community settings;

Whereas 65 percent of seniors who need long-term care rely exclusively on friends and family, and another 30 percent rely on a combination of paid caregivers and friends or family;

Whereas 15 percent of all seniors over the age of 65 suffer from depression;

Whereas studies have suggested that 25 to 50 percent of nursing home residents are affected by depression;

Whereas approximately 1,450,000 people live in nursing homes in the United States;

Whereas by 2018 there will be 3,600,000 seniors in need of a nursing home bed, which will be an increase of more than 2,000,000 from 2004;

Whereas as many as 60 percent of nursing home residents do not have regular visitors;

Whereas older patients with significant symptoms of depression have significantly higher health care costs than seniors who are not depressed;

Whereas people who are depressed tend to be withdrawn from their community, friends, and family;

Whereas the Corporation for National and Community Service (CNS) Senior Corps programs currently provide seniors with the opportunity to serve their communities through the Retired and Senior Volunteer Program, Foster Grandparent Program, and Senior Companion Program;

Whereas through the Senior Companion Program in particular, in the 2002 to 2003 program year, more than 17,000 low-income seniors volunteered their time assisting 61,000 frail elderly and homebound individuals who have difficulty completing daily tasks;

Whereas numerous volunteer organizations across the United States enable Americans of all ages to participate in similar activities;

Whereas Faith in Action, 1 volunteer organization, brings together 40,000 volunteers of many faiths to serve 60,000 homebound people with long-term health needs or disabilities across the country, 64 percent of whom are 65 years of age or older;

Whereas the thousands of volunteers that, through the Senior Companion Program and volunteer organizations nationwide, provide companionship and assistance to frail elderly individuals and homebound seniors, deserve to be commended for their work;

Whereas the demand for these services outstrips the number of volunteers, and organizations are seeking to enlist more individuals in the United States in the volunteer effort;

Whereas companionship and assistance programs for seniors with long-term health needs offer many demonstrated benefits, such as: allowing frail elderly individuals to remain in their homes; enabling seniors to maintain independence for as long as possible; providing encouragement and friendship to lonely seniors; and providing relief to family caregivers;

Whereas regular visitation and assistance is the best way of assuring seniors that they have not been forgotten, and State and local recognition of regular visitation programs can call further attention to the importance of volunteering on an ongoing basis; and

Whereas a month dedicated to service for seniors and recognized across the United States will call attention to volunteer organizations serving seniors and provide a platform for recruitment efforts: Now, therefore, be it

*Resolved*, That the Senate—

(1) designates September 2004 as ''Service for Seniors Month'';

(2) recognizes the need for companionship and assistance with daily tasks among seniors with long-term health conditions throughout the year, and encourages the people of the United States to volunteer regularly with homebound frail elderly or at a nursing home or long-term care facility;

(3) encourages volunteer organizations that offer companionship and assistance to seniors to incorporate ''Service for Seniors Month'' in their recruitment efforts;

(4) encourages individuals in the United States to volunteer in these service organizations in order to give back to a generation that sacrificed so much; and

(5) requests that the President issue a proclamation calling on the people of the United States and interested groups to observe ''Service for Seniors Month'' with appropriate ceremonies and activities that promote awareness of, and volunteer involvement service for, seniors with long-term health needs.

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## SENATE RESOLUTION 410—TO AUTHORIZE SENATE EMPLOYEES TO TESTIFY AND PRODUCE DOCUMENTS WITH LEGAL REPRESENTATION

Mr. FRIST (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 410

Whereas, the Department of Justice is requesting testimony in connection with a pending investigation into potential false statements to a committee of the Senate;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§ 288b(a) and 288c(a)(2), the Senate may direct its counsel to represent employees of the Senate with respect to any subpoena, order, or request for testimony relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence, under the control or in the possession of the Senate may, by the judicial or administrative process, be taken from such control or possession but by permission of the Senate; and

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

*Resolved* That present and former employees of the Senate are authorized to testify and to produce documents, except as to matters for which a privilege should be asserted, in connection with the pending investigation into potential false statements to a committee of the Senate, and any related proceedings.

SEC. 2. The Senate Legal Counsel is authorized to represent present and former employees of the Senate in connection with the testimony authorized in section one of this resolution.

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## SENATE RESOLUTION 411—TO AUTHORIZE DOCUMENT PRODUCTION BY THE SELECT COMMITTEE ON INTELLIGENCE

Mr. FRIST (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 411

Whereas, the United States Department of Justice has requested that the Senate Select Committee on Intelligence provide it with documents in connection with a pending investigation into the involvement of U.S. government officials in the counter-narcotics air interdiction program in Peru;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial or administrative process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

*Resolved* That the Chairman and Vice Chairman of the Senate Select Committee on Intelligence, acting jointly, are authorized to provide to the United States Department of Justice, under appropriate security procedures, copies of Committee documents sought in connection with its investigation into the involvement of U.S. government officials in the counter-narcotics air interdiction program in Peru.

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## SENATE RESOLUTION 412—EXPRESSING THE SENSE OF THE SENATE REGARDING THE IMPORTANCE OF MAINTAINING THE INDEPENDENCE AND INTEGRITY OF THE FINANCIAL ACCOUNTING STANDARDS BOARD

Mr. FITZGERALD (for himself, Mr. LEVIN, Mr. MCCAIN, and Mr. DURBIN) submitted the following resolution; which was referred to the Committee on Banking, Housing, and Urban Affairs:

S. RES. 412

Whereas the Financial Accounting Standards Board (FASB) was created in 1973 to establish and improve standards of financial accounting and reporting by publicly traded companies for the guidance and education of the public, including issuers of securities, auditors, and users of financial information;

Whereas the FASB is composed of a diverse, seven-member board of accounting experts representing the private sector, public accounting, academia, and Wall Street, all of whom are specifically qualified to set technical accounting standards;

Whereas the accounting standard setting process of the FASB involves an extensive ''due process'' that is open to public observation and participation;

Whereas on March 31, 2004, the FASB issued a proposed statement entitled ''Share-Based Payment'' that addresses the accounting of share-based payment transactions, including stock options, in which an enterprise receives employee services in exchange for equity instruments of the enterprise, or liabilities that are based on the fair value of the enterprise's equity instruments or that may be settled by the issuance of such equity instruments;

Whereas legislation has been introduced in Congress that would undermine the independence of the FASB by nullifying or delaying ongoing efforts by the FASB to improve accounting for equity-based compensation;

Whereas Congressional action that dictates accounting treatment of stock options by publicly traded companies would inject Congress directly into the accounting standard setting process mandating which types of stock-based compensation should be expensed, how such expenses should be measured, what enterprises should be exempt from expensing, and when and under what circumstances the Securities and Exchange Commission recognizes and enforces standards for the accounting of stock-based compensation;

Whereas Congressional action to set accounting standards would set the dangerous precedent of substituting provisions advocated by special interests in place of standards that are set independently and objectively by the FASB;

Whereas Congressional intervention in this area would not only politicize but also compromise the integrity of the accounting standard setting process of the FASB and undermine the credibility of financial reporting by United States companies;

Whereas Congress has long recognized the fundamental importance of the independent private sector accounting standard setting process to United States capital markets;

Whereas Congress reaffirmed this principle in the Sarbanes-Oxley Act of 2002 by authorizing the FASB to obtain independent funding through assessments on private industry rather than through appropriations from Congress or donations from private industry; and

Whereas the April 2003 Policy Statement of the Securities and Exchange Commission endorsed the fundamental importance of the independent private sector accounting standard setting process: Now, therefore, be it

*Resolved by the Senate*, That the Senate—

(1) should continue to recognize and support the integrity and independence of the accounting standard setting process of the Financial Accounting Standards Board;

(2) should not interfere with the independence of the Financial Accounting Standards Board; and

(3) should not dictate accounting standards to the Financial Accounting Standards Board for stock-based compensation or for any other financial accounting issue.

Mr. FITZGERALD. Mr. President, I rise today to submit a resolution on the importance of maintaining the independence and integrity of the Financial Accounting Standards Board (FASB). I am pleased to be joined by

my colleagues, Senator LEVIN, Senator MCCAIN and Senator DURBIN in this initiative.

For the past 30 years, the Financial Accounting Standards Board has been responsible for establishing and improving standards of financial accounting and reporting that are deemed ''generally accepted accounting principles.'' In order to ensure that these accounting principles are ''generally accepted,'' the FASB utilizes a deliberative process that is open to comment from the public, including the users of the financial statements and other third parties. The FASB has a diverse, seven-member board of accounting experts representing not only users of the financial statements but also preparers of financial statements. Because of its open deliberative process, the FASB has been able to maintain the integrity of its work through the independence it enjoys in setting accounting standards, away from special interests.

But it appears that special interests are pressuring the FASB and lobbying Congress to take a different route than the norm on the financial accounting treatment of employee stock options. Several bills have been introduced in Congress that would block the FASB's proposal to require the fair value of employee stock options to be expensed on grant date. Instead, those bills dictate the specific accounting treatment to be applied to employee stock options and when and under what circumstances the Securities and Exchange Commission should recognize accounting standards for employee stock options.

Political interference with the FASB's standards setting process would set a dangerous precedent. It is a bad idea for politicians in the House and the Senate to be substituting political decisions for the decisions by an expert private sector accounting standards board.

On July 6, 2004, The Washington Post published an editorial by Mr. Warren Buffett, Chief Executive Officer of Berkshire Hathaway, entitled ''Fuzzy Math And Stock Options.'' Mr. Buffett points out that the House of Representatives' ''anointment of itself as the ultimate scorekeeper for investors . . . comes from an institution that in its own affairs favors Enronesque accounting.'' Accordingly, he urges Congress not to interfere with the FASB's standard setting process and encourages chief executives who issue stock options ''to live with honest accounting.'' I ask unanimous consent that Mr. Buffet's op-ed be reprinted in the RECORD following my remarks.

We have been down this road before. A decade ago, the FASB proposed an accounting standard that would have required companies to record the value of employee stock options as a compensation expense on their income statements. At that time, the Senate overwhelmingly passed a resolution that condemned the FASB's new standard, and a separate bill was introduced that would have stripped the FASB of its rulemaking authority. Under this threat of evisceration, the FASB withdrew its recommendation. In my opinion, Congress' interference with that 1993 FASB proposal resulted in disastrous consequences with the accounting scandals at Enron, Global Crossing and WorldCom.

I believe congressional interference in this issue will ultimately undermine the FASB's credibility and make it more difficult in the future for the FASB to adopt standards when a powerful special interest stands in the way. If that occurs, the real losers will be the millions of investors who help drive our economy by investing in companies' debt and equity securities. Investors depend on financial statements to make critical judgments about where to direct their capital investments. It is no exaggeration that the integrity of these investment decisions and, indeed, of U.S. financial markets as a whole, depend upon the integrity of the accounting rules that ensure that each company's true financial condition is reflected in its financial statements.

I believe it is critical for the United States Senate to speak out at this pivotal time. Therefore, the resolution I introduce today would express the sense of the Senate that the Senate: (1) should continue to recognize and support the independence and integrity of the FASB's accounting standard setting process; (2) should not interfere with the FASB's independence; and (3) should not dictate accounting standards to the FASB for stockbased compensation or for any other financial accounting issue.

As members of Congress, we must allow the FASB to do its job, free from political interference. Therefore, I urge my colleagues to support expeditious adoption of this resolution.

[From the Washington Post, July 6, 2004]

FUZZY MATH AND STOCK OPTIONS

(By Warren Buffet)

Until now the record for mathematical lunacy by a legislative body has been held by the Indiana House of Representatives, which in 1897 decreed by a vote of 67 to 0 that pi—the ratio of the circumference of a circle to its diameter—would no longer be 3.14159 but instead be 3.2. Indiana schoolchildren momentarily rejoiced over this simplification of their lives. But the Indiana Senate, composed of cooler heads, referred the bill to the Committee for Temperance, and it eventually died.

What brings this episode to mind is that the U.S. House of Representatives is about to consider a bill that, if passed, could cause the mathematical lunacy record to move east from Indiana. First, the bill decrees that a coveted form of corporate pay—stock options—be counted as an expense when these go to the chief executive and the other four highest-paid officers in a company, but be disregarded as an expense when they are issued to other employees in the company. Second, the bill says that when a company is calculating the expense of the options issued to the mighty five, it shall assume that stock prices never fluctuate.

Give the bill's proponents an A for imagination—and for courting contributors—and a flatout F for logic.

All seven members of the Financial Accounting Standards Board, all four of the big accounting firms and legions of investment professionals say the two proposals are nonsense. Nevertheless, many House members wish to ignore these informed voices and make Congress the Supreme Accounting Authority. Indeed, the House bill directs the Securities and Exchange Commission to ''not recognize as ''generally accepted'' any accounting principle established by a standard setting body'' that disagrees with the House about the treatment of options.

The House's anointment of itself as the ultimate scorekeeper for investors, it should be noted, comes from an institution that in its own affairs favors Enronesque accounting. Witness the fanciful ''sunset'' provisions that are used to meet legislative ''scoring'' requirements. Or regard the unified budget protocol, which applies a portion of annual Social Security receipts to reducing the stated budget deficit while ignoring the concomitant annual costs for benefit accruals.

I have no objection to the granting of options. Companies should use whatever form of compensation best motivates employees, whether this be cash bonuses, trips to Hawaii, restricted stock grants or stock options. But aside from options, every other item of value given to employees is recorded as an expense. Can you imagine the derision that would be directed at a bill mandating that only five bonuses out of all those given to employees be expensed? Yet that is a true analogy to what the option bill is proposing.

Equally nonsensical is a section in the bill requiring companies to assume, when they are valuing the options granted to the mighty five, that their stocks have zero volatility. I've been investing for 62 years and have yet to meet a stock that doesn't fluctuate. The only reason for making such an Alice-in-Wonderland assumption is to significantly understate the value of the few options that the House wants counted. This undervaluation, in turn, enables chief executives to lie about what they are truly being paid and to overstate the earnings of the companies they run.

Some people contend that options cannot be precisely valued. So what? Estimates pervade accounting. Who knows with precision what the useful life of software, a corporate jet or a machine tool will be? Pension costs, moreover, are even fuzzier, because they require estimates of future mortality rates, pay increases and investment earnings. These guesses are almost invariably wrong, often substantially so. But the inherent uncertainties involved do not excuse companies from making their best estimate of these, or any other, expenses. Legislators should remember that it is better to be approximately right than precisely wrong.

If the House should ignore this logic and legislate that what is an expense for five is not an expense for thousands, there is reason to believe that the Senate—like the Indiana Senate 107 years ago—will prevent this folly from becoming law. Sen. Richard Shelby (R–Ala.), chairman of the Senate Banking Committee, has firmly declared that accounting rules should be set by accountants, not by legislators.

Even so, House members who wish to escape the scorn of historians should render the Senate's task moot by killing the bill themselves. Or if they are absolutely determined to meddle with reality, they could attack the obesity problem by declaring that henceforth it will take 24 ounces to make a pound. If even that friendly standard seems unbearable to their constituents, they can exempt all but the fattest five in each congressional district from any measurement of weight.

In the late 1990s, too many managers found it easier to increase ''profits'' by accounting

maneuvers than by operational excellence. But just as the schoolchildren of Indiana learned to work with honest math, so can option-issuing chief executives learn to live with honest accounting. It's high time they step up to that job.

## SENATE CONCURRENT RESOLUTION 127—EXPRESSING THE SENSE OF CONGRESS THAT THE PRESIDENT SHOULD DESIGNATE SEPTEMBER 11 AS A NATIONAL DAY OF VOLUNTARY SERVICE, CHARITY, AND COMPASSION

Mr. SCHUMER (for himself, Mrs. CLINTON, Mr. LIEBERMAN, and Mrs. BOXER) submitted the following concurrent resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. CON. RES. 127

Whereas across the United States and around the world, people of all ages and walks of life collectively witnessed an event of immense tragedy on September 11, 2001;

Whereas the events of that day instantly transformed many lives, some through personal loss and many others through an unfamiliar sense of individual and national vulnerability;

Whereas an unprecedented, historic bonding of the people of the United States arose from the collective shock, unifying the United States in a sustained outpouring of national spirit, pride, selflessness, generosity, courage, and service;

Whereas on that day and the immediate days that followed, many brave people heroically, tirelessly, and courageously participated in an extraordinarily difficult and dangerous rescue and recovery effort, in many cases voluntarily putting their own well-being at risk;

Whereas September 11 will never and should never be just another day in the hearts and minds of all people of the United States;

Whereas the creation of memorials and monuments honoring the lives lost on September 11, 2001, as well as the efforts of those who participated in rescue and recovery and voluntary service efforts, are necessary, proper, and fitting, but alone cannot fully capture the desire of the United States to pay tribute in a meaningful way;

Whereas it is fitting and essential to establish a lasting, meaningful, and positive legacy of service for future generations as a tribute to those heroes of September 11, 2001;

Whereas many citizens wish to memorialize September 11 by engaging in personal and individual acts of community service or other giving activities as part of a national day of recognition and tribute; and

Whereas to lose this opportunity to bring people together for such an important endeavor would be a tragedy unto itself: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That—

(1) it is the sense of Congress that the President should designate September 11 as an annually recognized day of voluntary service, charity, and compassion; and

(2) Congress urges the President to issue a proclamation calling upon the people of the United States to observe this day with appropriate and personal expressions of service, charity, and compassion toward others.

## SENATE CONCURRENT RESOLUTION 128—EXPRESSING THE SENSE OF CONGRESS REGARDING THE IMPORTANCE OF LIFE INSURANCE, AND RECOGNIZING AND SUPPORTING NATIONAL LIFE INSURANCE AWARENESS MONTH

Mr. NELSON of Nebraska (for himself and Mr. CHAMBLISS) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 128

Whereas life insurance is an essential part of a sound financial plan;

Whereas life insurance provides financial security for families in the event of a premature death by helping surviving family members to meet immediate and longer-term financial obligations and objectives;

Whereas nearly 50,000,000 Americans say they lack the life insurance coverage needed to ensure a secure financial future for their loved ones;

Whereas recent studies have found that when a premature death occurs, insufficient life insurance coverage on the part of the insured results in three-fourths of surviving family members' having to take measures such as working additional jobs or longer hours, borrowing money, withdrawing money from savings and investment accounts, and, in too many cases, moving to smaller, less expensive housing;

Whereas individuals, families, and businesses can benefit greatly from professional insurance and financial planning advice, including the assessment of their life insurance needs; and

Whereas the Life and Health Insurance Foundation for Education (LIFE), the National Association of Insurance and Financial Advisors (NAIFA), and a coalition representing hundreds of leading life insurance companies and organizations have designated September 2004 as ''Life Insurance Awareness Month'', the goal of which is to make consumers more aware of their life insurance needs, seek professional advice, and take the actions necessary to achieve the financial security of their loved ones: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That Congress—

(1) recognizes and supports the goals and ideals of ''Life Insurance Awareness Month''; and

(2) requests the President to issue a proclamation calling on the Federal Government, States, localities, schools, nonprofit organizations, businesses, other entities, and the people of the United States to observe ''Life Insurance Awareness Month'' with appropriate programs and activities.

## AMENDMENTS SUBMITTED AND PROPOSED

SA 3566. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 2541, be reauthorize and restructure the National Aeronautics and Space Administration, and for other purposes; which was ordered to lie on the table.

## TEXT OF AMENDMENTS

**SA 3566.** Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 2541, to reauthorize and restructure the National Aeronautics and Space Administration, and for other purposes; which was ordered to lie on the table; as follows:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''National Aeronautics and Space Administration Authorization Act of 2004''.

**SEC. 2. FINDINGS.**

The Congress finds the following:

(1) American space flight is imbued with the promise of expanding the boundaries of human knowledge and human adventure. It is a beacon of leadership and a proud demonstration of human freedom, destiny, and progress.

(2) The National Aeronautics and Space Administration is uniquely qualified and positioned to develop space on behalf of and for the American people, requiring its mission to be broad and include many disciplines and interests that might contribute to, or benefit from space flight.

(3) Like our other American institutions, American space flight is founded upon the principle that human fallibility and frailty can be overcome through personal dedication and institutional strength and determination. The National Aeronautics and Space Administration must continue to listen to the voices of change and restore its commitment to safety and the protection of human life.

(4) In a year of tragedy, renewal, and re-envisioning, it behooves the United States to reflect deeply on both the strengths and weaknesses of American space flight, to build upon foundations, and to reformulate purposes while not abandoning proven purposes and capabilities needlessly nor carelessly.

(5) Fiscal year 2005 should be a year of continued reassessment and planning for the National Aeronautics and Space Administration, laying the groundwork for implementing a United States space program for the future that reflects the role of space flight in the everyday affairs of the American people and the future prestige and betterment of the Nation while ascertaining the specific roles that many other American institutions could and should play in that future.

**SEC. 3. PURPOSE.**

The purpose of this Act is to authorize programs of the National Aeronautics and Space Administration for fiscal year 2005 and to better define the policy of the United States regarding the future of U.S. space flight.

**SEC. 4. DECLARATION OF UNITED STATES SPACE POLICY.**

(a) Section 102 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451) is amended to read as follows:

**''SEC. 102. CONGRESSIONAL DECLARATION OF POLICY AND PURPOSE.**

''(a) IN GENERAL.—The Congress hereby reaffirms that it is the policy of the United States that activities in space should be devoted to peaceful purposes for the benefit of all mankind.

''(b) PURPOSE.—The United States shall conduct such activities as are required to sponsor, guide, and secure the development of space for the peaceful benefit of all mankind through fostering the use of space for science, for the preservation of the Earth, and for the advancement of peace and worldwide economic well-being.

''(c) ACTIVITIES.—The Congress also reaffirms that the general welfare and security of the United States require that adequate provision be made for aeronautical and space activities, including—

''(1) the promotion and development of the use of space for United States civil, economic, and national security purposes;

''(2) ensuring the safety of civil, commercial, and military space operations; and

''(3) protection of the territorial and extraterritorial claims and interests of the United States in space.

''(d) ROLE OF NASA.—The role of the National Aeronautics and Space Administration shall be to foster the development of space flight and aeronautical capabilities on behalf of the United States, including—

''(1) conducting a program of scientific discovery in and from the vantage point of space;

''(2) demonstrating the merit and ability of humans to explore and inhabit deep space; and

''(3) promoting the development of technologies and capabilities to be used by the United States for the preservation and development of the Earth.

''(e) OTHER ACTIVITIES.—The United States shall establish other capabilities related to using space for peaceful purposes, including the promotion and development of national, state, local, tribal, and international capabilities in—

''(1) public safety, homeland security, and public health management;

''(2) telecommunications, transportation, and urban and regional development;

''(3) agriculture, wildlife, forestry, mineral, and energy resource management; and

''(4) other uses benefiting the Earth and the Earth's people, natural resources, and economies.

''(f) COMMERCIAL USE OF SPACE.—It is the policy of the United States to seek and encourage, to the maximum extent possible, the fullest commercial use of space, including the use of commercial capabilities to support United States civil and national security purposes.''.

**SEC. 5. EXPLORATION PROGRAM.**

(a) IN GENERAL.—In fiscal year 2005, the National Aeronautics and Space Administration shall formulate plans, develop requirements, and make recommendations for a multi-decadal program of human travel, habitation, and exploration of other bodies and locations in Earth's solar system, beginning with the start of demonstration of human capabilities on Earth's Moon by 2020.

(b) PLAN FOR U.S. HUMAN SPACE EXPLORATION.—As part of the budget request for FY 2006, the Administrator shall provide an independent assessment of the status and plans for the National Aeronautics and Space Administration's human exploration program. The assessment shall include—

(1) the schedule, technical milestones, and costs for design and construction of human crewed transport systems including a crew exploration vehicle and launch systems and other ground, in-space, and surface capabilities necessary to conduct extended missions on Earth's Moon by 2020;

(2) the objectives of extended presence on Earth's Moon and the proposed timetable for their accomplishment;

(3) the contribution of human presence to meeting those objectives; and

(4) the program of basic and applied research and development of advanced robotic and robotic-hybrid technology that will be used to demonstrate human exploration capabilities on Earth's Moon.

(c) MANAGEMENT PLAN.—As part of the budget request for fiscal year 2006 and each succeeding fiscal year, the Administrator shall submit a management plan and life cycle cost estimate for its human exploration program to the Congress. The Administrator shall include all the assessment items described in subsection (b) as baseline requirements and specifications. The Administrator shall include in the initial plan submitted under this subsection a description of the process for making the annual revisions of the plan.

(d) LUNAR CAPABILITIES.—The National Aeronautics and Space Administration is hereby authorized to begin studies, tests, demonstrations, and design of a crew exploration vehicle and launch system to be used for future human exploration to Earth's Moon and other destinations, subject to formal approval of the program at the time of development, and of robotic systems necessary to survey and demonstrate other robotic and robotic-assisted capabilities to explore the Earth's Moon.

(e) CONTINUITY OF U.S. CREW TRANSPORTATION.—The Congress hereby declares that a prolonged gap of 1 or more years in the United States' capability to transport and return American astronauts living in space is an emergency period of space flight operations inconsistent with the safety and management objectives of United States space flight. Whenever such an emergency period is forseen, the Administrator shall submit a plan to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science and make a request for supplemental appropriations, if so required, to remedy this situation in a safe, justifiable, and timely manner.

**SEC. 6. HUBBLE SPACE TELESCOPE.**

(a) SENSE OF CONGRESS.—It is the sense of the Congress that the Hubble Space Telescope is—

(1) the Hubble Space Telescope is a source of inspiration to the American people and their support for the United States space program; and

(2) a tangible measure of the success of the United States space program, as reflected by the extraordinary contributions made to scientific research and education, without parallel since the Apollo missions to Earth's Moon.

(b) SERVICING MISSION.—The Administrator shall continue to examine all possible options for carrying out alternative servicing of the Hubble Space Telescope while continuing to plan for a human-assisted servicing mission using the Space Shuttle if alternative servicing cannot fully accomplish the original objectives of the SM-4 mission.

(c) HUBBLE SERVICING PLAN.—Within 60 days after the National Academy of Sciences issues its study on the future of the Hubble Space Telescope, the Administrator shall submit a plan for servicing the Hubble to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science. The plan should address the risks, benefits, and costs of fully accomplishing the original objectives of the SM-4 mission and shall propose options for servicing of the facility.

**SEC. 7. REPORTS.**

(a) NASA CHANGES.—By May 1, 2005, or 30 days prior to the return-to-flight of the Space Shuttle if earlier, the Administrator shall report to the Congress summarizing and independently reporting on the status and effectiveness of National Aeronautics and Space Administration's compliance with all observations and recommendations of the Columbia Accident Investigation Board, including changes at the National Aeronautics and Space Administration in resolving concerns about the safety, operations, engineering, and management cultures of the agency. This report shall also address the adequacy of these changes in achieving safe design, management, and operation of any future human space flight systems, including international and commercial crew and cargo transportation and habitation systems used to support the International Space Station or to support United States human space flight and operation at other destinations.

(b) UNITED STATES LAUNCH TECHNOLOGY.—As part of the budget request for FY 2006, the Administrator, in concert with the United States Department of Transportation and the United States Department of Defense, shall produce a report on the state of launch technology, systems, facilities, and programs of the United States. This report shall provide—

(1) an assessment of the state of United States technologies and systems and steps necessary to achieve safe human launch and in-space operations and reliable launch and transport of physical cargo and systems;

(2) a retrospective and prospective analysis of the cost of United States space transportation, including human and cargo transport, and steps by which these costs can be reduced by a factor of 10 or more; and

(3) a proposed program of government and private investments needed to achieve safe, reliable, low cost space flight by 2015 or earlier.

(c) CONTINUITY OF U.S. CREW TRANSPORTATION CAPABILITY.—Consistent with section 5(e) of this Act, the Administrator shall submit a plan and request for supplemental appropriations within 60 days after the date of enactment of this Act that addresses how United States astronauts will be transported to and from the International Space Station or other locations in space using United States space systems following the termination of flight of the Space Shuttle, including the possibility of accelerating the availability of the crew exploration vehicle by that time.

(d) PRIORITIZATION OF SCIENCE PROGRAMS.—As part of the budget request for fiscal year 2006 and each subsequent year, the Administrator shall submit to the Congress a prioritization of scientific research projects with an estimated life cycle cost greater than $250,000,000 along with a justification of that prioritization. The prioritization shall be based upon the scientific merit of the missions, the potential scientific impact of the missions products and results, the complexity of the mission, and the real and anticipated readiness of the technologies to be used in the mission. The prioritization shall be developed in consultation with the NASA Advisory Council and the Space Studies Board of the National Research Council.

(e) ORGANIZATION OF UNITED STATES SPACE ACTIVITIES AND PROGRAMS.—By August 1, 2005, the Administrator shall report to the Congress on future United States plans to carry out the provisions of section 4 of this Act, including—

(1) the organization of the United States governmental and industrial partners necessary to ensure safe, reliable United States space transportation;

(2) the organization of the National Aeronautics and Space Administration, its operating centers, and its relationship to industry and other private partners; and

(3) the role of international partners and firms in future United States human space exploration.

**SEC. 8. ESTABLISHMENT OF NATIONAL OFFICES OF SAFETY AND TECHNICAL ENGINEERING.**

All public and private entities of the United States that develop or operate space transportation or habitation systems certified for human use shall make provision for the separation of flight operations from development and shall implement independent safety and technical organizations to oversee the safe conduct of flight.

**SEC. 9. AEROSPACE WORKFORCE INITIATIVE.**

(a) IN GENERAL.—The Administrator shall establish a program of competitive, merit-based, multi-year grants for eligible applicants to increase the number of students studying toward and completing technical training programs, certificate programs, and

associate's, bachelor's, master's, or doctorate degrees in fields related to aerospace.

(b) INCREASED PARTICIPATION GOAL.—In selecting projects under this paragraph, the Administrator shall strive to increase the number of students studying toward and completing technical training and apprenticeship programs, certificate programs, and associate's or bachelor's degrees in fields related to aerospace who are individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b).

(c) SUPPORTABLE PROJECTS.—The types of projects the Administrator may support under this paragraph include those that promote high quality—

(1) interdisciplinary teaching;

(2) undergraduate-conducted research;

(3) mentor relationships for students;

(4) graduate programs;

(5) bridge programs that enable students at community colleges to matriculate directly into baccalaureate aerospace related programs;

(6) internships, including mentoring programs, carried out in partnership with the aerospace and aviation industry;

(7) technical training and apprenticeships that prepare students for careers in aerospace manufacturing or operations; and

(8) innovative uses of digital technologies, particularly at institutions of higher education that serve high numbers or percentages of economically disadvantaged students.

(d) 50 PERCENT FEDERAL SHARE.—Not less than 50 percent of the publicly financed costs associated with eligible activities shall come from non-Federal sources. Matching contributions may not be derived, directly or indirectly, from Federal funds. The Administrator shall endeavor to minimize the Federal share, taking into account the differences in fiscal capacity of eligible applicants.

(e) GRANTEE REQUIREMENTS.—

(1) TARGETS.—In order to receive a grant under this section, an eligible applicant shall establish targets to increase the number of students studying toward and completing technical training and apprenticeship programs, certificate programs, and associate's or bachelor's degrees in fields related to aerospace.

(2) GRANT PERIOD.—A grant under this section shall be awarded for a period of 5 years, with the final 2 years of funding contingent on the Director's determination that satisfactory progress has been made by the grantee toward meeting the targets established under paragraph (1).

(3) COMMUNITY COLLEGE RULE.—In the case of community colleges, a student who transfers to a baccalaureate program, or receives a certificate under an established certificate program, in science, mathematics, engineering, or technology shall be counted toward meeting a target established under paragraph (1).

(f) DEFINITIONS.—In this section—

(1) ELIGIBLE APPLICANT DEFINED.—The term ''eligible applicant'' means—

(A) an institution of higher education;

(B) a consortium of institutions of higher education; or

(C) a partnership between—

(i) an institution of higher education or a consortium of such institutions; and

(ii) a nonprofit organization, a State or local government, or a private company, with demonstrated experience and effectiveness in aerospace education.

(2) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given that term by subsection (a) of section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001(a)), and includes an institution described in subsection (b) of that section.

**SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

(a) SCIENCE AERONAUTICS AND EXPLORATION.—There are authorized to be appropriated to the National Aeronautics and Space Administration for fiscal year 2005 $7,995,700,000 for science, aeronautics, and exploration, of which—

(1) $4,138,300,000 shall be for Space Science;

(2) $1,605,500,000 shall be for Earth Science;

(3) $984,600,000 shall be for Biological and Physical Research;

(4) $1,036,900,000 shall be for Aeronautics; and

(5) $230,400,000 shall be for Education, including ($20,000,000 for EPSCoR and $28,000,000 for Space Grant).

(b) SPACE FLIGHT AND EXPLORATION.—There are authorized to be appropriated to the National Aeronautics and Space Administration for fiscal year 2005 $8,220,400,000 for space flight and exploration capabilities, of which no less than $4,319,200,000 shall be for the Space Shuttle and no less than $30,000,000 shall be for the Independent Technical and Engineering Authority, each of which shall be maintained as separate accounts.

(c) INSPECTOR GENERAL.—There are authorized to be appropriated to the National Aeronautics and Space Administration for fiscal year 2005 $28,300,000, which shall be for the use of the Inspector General.

**SEC. 11. RESTRICTION ON TRANSFER OF FUNDING.**

In fiscal year 2005, no funds other than those appropriated for Biological and Physical Research may be transferred from the account for Science, Aeronautics, and Exploration to the account for Space Flight and Exploration Capabilities without the approval of the Chairman and Ranking Member of the Senate Committee on Commerce, Science, and Transportation Committee and the House of Representatives Committee on Science.

**SEC. 12. ADMINISTRATOR DEFINED.**

In this Act, the term ''Administrator'' means the Administrator of the National Aeronautics and Space Administration.

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on July 20, 2004, at 9:30 a.m., in closed session to receive a classified briefing from Major General Keith W. Dayton, USA, Former Commander of the Iraq Survey Group (ISG) regarding the activities of the ISG in Iraq.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Tuesday, July 20, 2004, at 2:30 p.m., to conduct an oversight hearing on the Semi-Annual Monetary Policy Report of the Federal Reserve.

Concurrent with the hearing, the Committee intends to vote on the nominations of Mr. Stuart Levey, of Maryland, to be Under Secretary of the Treasury for Enforcement; Mr. Juan Carlos Zarate, of California, to be Assistant Secretary of the Treasury for Terrorist Financing and Financial Crimes; and Ms. Carin M. Barth, of Texas, to be the Chief Financial Officer, Department of Housing and Urban Development.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, July 20 at 10 a.m. to receive testimony on S. 2590, a bill to provide a conservation royalty from outer continental shelf revenues to establish the Coastal Impact Assistance Program, to provide assistance to States under the Land and Water Conservation Fund Act of 1965, to ensure adequate funding for conserving and restoring wildlife, to assist local governments in improving local park and recreation systems, and for other purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet in open Executive Session during the session on July 20, 2004, at 10 a.m., to consider favorably reporting S. 2677, the U.S.-Morocco Free Trade Agreement Implementation Act; H.R. 982, a bill to clarify the tax treatment of bonds and other obligations issued by the Government of American Samoa, and, the nominations of Joey Russell George, to be Treasury Inspector General for Tax Administration, U.S. Department of Treasury; Patrick P. O'Carroll, Jr., to be Inspector General, Social Security Administration; Paul B. Jones, to be Member, IRS Oversight Board; and, Charles L. Kolbe, to be Member, IRS Oversight Board.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, July 20, 2004, at 9:30 a.m. to hold a hearing on The Road Map: Detours and Disengagements.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Tuesday, July 20, 2004, at 10 a.m. in Room 485 of the Russell Senate Office Building to conduct a hearing on S. 2605, the Snake River (Nez Perce) Water Rights Act of 2004.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized

to meet to continue its markup on Tuesday, July 20, 2004, at 9:30 a.m. in Dirksen Senate Office Building Room 226. The agenda is attached.

Agenda

I. Nominations: Claude A. Allen to be U.S. Circuit Judge for the Fourth Circuit; David W. McKeague to be United States Circuit Judge for the Sixth Circuit; Richard A. Griffin to be United States Circuit Judge for the Sixth Circuit; Virginia Maria Hernandez Covington to be United States District Judge for the Middle District of Florida; Michael H. Schneider, Sr., of Texas to be United States District Judge for the Eastern District of Texas; David E. Nahmias, of Georgia to be United States Attorney for the Northern District of Georgia; Robert Clark Corrente to be United States Attorney for the District of Rhode Island; Ricardo H. Hinojosa to be Chair of the United States Sentencing Commission; Michael O'Neill to be a Member of the United States Sentencing Commission; and Ruben Castillo to be a Member of the United States Sentencing Commission.

II. Legislation: S. 1635, L–1 Visa (Intracompany Transferee) Reform Act of 2003—Chambliss; S.J. Res. 4, Proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States Act of 2003—Hatch, Feinstein, Craig, Sessions, DeWine, Grassley, Graham, Cornyn, Chambliss, Specter, Kyl; S. 700, Advancing Justice through DNA Technology Act of 2003—Hatch, Biden, Specter, Leahy, DeWine, Feinstein, Kennedy, Schumer, Durbin, Kohl, Edwards; S. 2396, Federal Courts Improvement Act of 2004—Hatch, Leahy, Chambliss, Durbin, Schumer; S. Res. 401, A resolution designating the week of November 7 through November 13, 2004, as ''National Veterans Awareness Week'' to emphasize the need to develop educational programs regarding the contributions of veterans to the country of 2004—Biden, Chambliss, Cornyn, Durbin, Feingold, Feinstein, Graham, Grassley, Kennedy, Sessions, Specter; and S. Con. Res. 109, A concurrent resolution commending the United States Institute of Peace on the occasion of its 20th anniversary and recognizing the Institute for its contribution to international conflict resolution of 2004—Inouye, Harkin, Warner.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON VETERANS' AFFAIRS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Tuesday, July 20, 2004, at 2:30 p.m., for a markup on the pending legislation. The meeting will be held in room 418 of the Russell Senate Office Building.

Agenda

1. S. 1153, the ''Veterans Prescription Drugs Assistance Act of 2004;''

2. S. 2483, the ''Veterans Compensation Cost of Living Adjustment Act of 2004;''

3. S. 2484, the ''Department of Veterans Affairs Health Care Personnel Enhancement Act of 2003,'' as amended;

4. S. 2485, the ''Department of Veterans Affairs Real Property and Facilities Management Improvement Act of 2004,'' as amended;

5. S. 2486, the ''Veterans Benefits Improvements Act of 2004,'' as amended.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. HATCH. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on July 20, 2004 at 10:30 a.m. to hold a hearing on intelligence matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. HATCH. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on July 20, 2004 at 2:30 p.m. to hold a hearing on intelligence matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, be authorized to meet on Tuesday, July 20, 2004 at 9 a.m. for a hearing entitled, ''Building the 21st Century Federal Workforce: Assessing Progress in Human Capital Management.''

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions, Subcommittee on Substance Abuse and Mental Health Services be authorized to meet for a hearing on Performance and Outcome Measurement in Substance Abuse and Mental Health Programs during the session of the Senate on Tuesday, July 20, 2004, at 10 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

## PRIVILEGES OF THE FLOOR

Mr. LEAHY. Mr. President, I ask unanimous consent that privilege of the floor be granted to law clerks from my office, Patrick Campbell and Daniel Urman, during consideration of the nomination of William Myers.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the following fellows and interns be granted the privilege of the floor during consideration of the Morocco bill: Sarah Hagigh, Molly Bell, Tony Cerise, Ashley Griffith, Ade Ifelayo, Kellen Moriarty, Scott Richardson, Alex Robles, Ben Sather, John Van Atta, Chris Wardell, Steve Beasley, Jodi George, Scott Landes, Pascal Niedermann, and Matt Stokes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I ask unanimous consent that Debbie Singer, a fellow in the Office of Senator LEVIN, be granted floor privileges for tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

## MEASURES READ THE FIRST TIME—S. 2694, S. 2695, and H.R. 4492

Mr. FRIST. Mr. President, I understand there are three bills at the desk, and I ask unanimous consent that they be read for the first time en bloc.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will read the titles of the bills for the first time, en bloc.

The legislative clerk read as follows:

A bill (S. 2694) to amend title XVIII of the Social Security Act to provide for the automatic enrollment of medicaid beneficiaries for prescription drug benefits under part D of such title, and for other purposes.

A bill (S. 2695) to amend the Omnibus Crime Control and Safe Streets Act of 1968 to expand the definition of firefighter to include apprentices and trainees, regardless of age or duty limitations.

A bill (H.R. 4492) to amend the Omnibus Parks and Public Lands Management Act of 1996 to extend the authorization for certain national heritage areas, and for other purposes.

Mr. FRIST. Mr. President, I now ask for their second reading and, in order to place the bills on the Calendar under the provisions of rule XIV, I object to further proceedings on these matters, en bloc.

The ACTING PRESIDENT pro tempore. Objection is heard.

The bills will receive their second reading on the next legislative day.

## COMMEMORATING THE 400TH ANNIVERSARY OF THE JAMESTOWN SETTLEMENT

## COMMEMORATING THE 230TH ANNIVERSARY OF THE UNITED STATES MARINE CORPS

## IN COMMEMORATION OF CHIEF JUSTICE JOHN MARSHALL

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Nos. 642 and 643, and H.R. 2768, which is at the desk, en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the clerk will report the titles of the bills en bloc.

The legislative clerk read as follows:

A bill (H.R. 1914) to provide for the issuance of a coin to commemorate the 400th anniversary of the Jamestown settlement.

A bill (H.R. 3277) to require the Secretary of the Treasury to mint coins in commemoration of the 230th Anniversary of the United States Marine Corps, and to support construction of the Marine Corps Heritage Center.

A bill (H.R. 2768) to require the Secretary of the Treasury to mint coins in commemoration of Chief Justice John Marshall.

There being no objection, the Senate proceeded to consider the bills, en bloc.

Mr. FRIST. Mr. President, I ask unanimous consent that the bills be read a third time and passed, the motions to reconsider be laid upon the table, en bloc, and that any statements relating to the bills be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The bills (H.R. 1914, H.R. 3277, and H.R. 2768) were read the third time and passed.

## JOHN MARSHALL COMMEMORATIVE COIN ACT

Mr. LEAHY. Mr. President, I am pleased that the Senate is passing legislation to honor the contributions of John Marshall, the great Chief Justice of the Supreme Court, through the minting and issuance of a commemorative coin by the U.S. Treasury.

As an original cosponsor of S. 1531, the Chief Justice John Marshall Commemorative Coin Act, I have worked closely with Senator HATCH to do all that we possibly can to speedily pass this act into law. The act authorizes the Treasury Department to mint and issue coins in honor of Chief Justice John Marshall in the year 2005. Funds raised by sale of the coin will support the Supreme Court Historical Society. Sales of the coin also cover all of the costs of minting and issuing these coins, so that the American taxpayer is not bearing any cost whatsoever of this commemoration.

It is fitting that sales of a coin that bears the likeness of Chief Justice Marshall will be used to support the Supreme Court Historical Society. The society is a nonprofit organization whose purpose is to preserve and disseminate the history of the Supreme Court of the United States. Founded by Chief Justice Warren Burger, the society's mission is to provide information and historical research on our Nation's highest court. The society accomplishes this mission by conducting programs, publishing books, supporting historical research, and collecting antiques and artifacts related to the Court's history. We are happy to assist a worthwhile organization like the Supreme Court Historical Society.

In our successful efforts to obtain support for the bill, we gained 75 cosponsors in the Senate over the past year. Given the noble cause, it was not a hard sell. Yet, the number of bipartisan supporters is a proper tribute to the great Chief Justice John Marshall. John Marshall is known as ''the great Chief Justice'' of the Supreme Court. Marshall served on the bench for 34 years and established many of the constitutional doctrines we revere today. He is best known and respected for the fundamental principle of checks and balances of our democratic government.

I thank all the Senators and Representatives who supported this legislation—too numerous to name. I also thank the Supreme Court Historical Society for its dedication to this important tribute to Chief Justice John Marshall.

The ACTING PRESIDENT pro tempore. The Chair, on behalf of the majority leader, pursuant to Public Law 96–114, as amended, appoints the following individuals to the Congressional Award Board: Kathy Didawick of Virginia and Michael Carozza of Maryland.

## SENATE LEGAL COUNSEL AUTHORIZATION

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 410 which was submitted earlier today.

The ACTING PRESIDENT pro tempore. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 410) to authorize Senate employees to testify and produce documents with legal representation.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, the Department of Justice is conducting an investigation into whether false statements were made to a committee of the Senate in the course of responding to oversight inquiries by that committee. As part of that investigation, the Justice Department is seeking testimony about potentially relevant information from the Senate.

Accordingly, in keeping with the Senate's usual practice, this resolution would authorize present and former employees of the Senate to provide testimony sought by the Justice Department, except for material as to which a privilege should be asserted, in order to assist the Department in this matter.

Also in keeping with the Senate's usual practice, this resolution authorizes documentary production and representation by the Senate legal counsel in connection with this testimony, where appropriate.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating to this matter be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The resolution (S. Res. 410) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 410

Whereas, the Department of Justice is requesting testimony in connection with a pending investigation into potential false statements to a committee of the Senate;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§ 288b(a) and 288c(a)(2), the Senate may direct its counsel to represent employees of the Senate with respect to any subpoena, order, or request for testimony relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial or administrative process, be taken from such control or possession but by permission of the Senate; and

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

*Resolved* That present and former employees of the Senate are authorized to testify and to produce documents, except as to matters for which a privilege should be asserted, in connection with the pending investigation into potential false statements to a committee of the Senate, and any related proceedings.

SEC. 2. The Senate Legal Counsel is authorized to represent present and former employees of the Senate in connection with the testimony authorized in section one of this resolution.

## AUTHORIZING DOCUMENT PRODUCTION BY SELECT COMMITTEE ON INTELLIGENCE

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 411 which was submitted earlier today.

The ACTING PRESIDENT pro tempore. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 411) to authorize document production by the Select Committee on Intelligence.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, the Select Committee on Intelligence conducted a review in 2001 of United States assistance to Peruvian counter-drug air interdiction efforts, following the mistaken shootdown of a civilian aircraft by the Peruvian Air Force in that same year. The committee prepared a report in which it made factual findings detailing the shortcomings that led to this tragic incident. The committee report made a number of recommendations about requirements that should precede further U.S. assistance to a foreign government engaged in a program of interdicting drug trafficking aircraft.

The United States Department of Justice is now conducting an investigation of the involvement of U.S. government officials in the Peruvian counternarcotics air interdiction program, which has been operating since 1995. During that time the Senate Intelligence Committee has had oversight

jurisdiction. As part of that investigation, the Justice Department is reviewing the testimony and briefings that CIA personnel gave to the congressional oversight committees, including the Senate Intelligence Committee, from the inception of the air interdiction program.

To assist the Justice Department in its investigation, this resolution would authorize the chair and vice chair, acting jointly, to provide to the Justice Department, under appropriate security procedures, committee hearing transcripts and other committee records pertinent to its oversight of the Peruvian counter-narcotics air interdiction program.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to this matter be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The resolution (S. Res. 411) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 411

Whereas, the United States Department of Justice has requested that the Senate Select Committee on Intelligence provide it with documents in connection with a pending investigation into the involvement of U.S. government officials in the counter-narcotics air interdiction program in Peru;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial or administrative process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

*Resolved* That the Chairman and Vice Chairman of the Senate Select Committee on Intelligence, acting jointly, are authorized to provide to the United States Department of Justice, under appropriate security procedures, copies of Committee documents sought in connection with its investigation into the involvement of U.S. government officials in the counter-narcotics air interdiction program in Peru.

## UNANIMOUS CONSENT AGREEMENT—H.R. 4766

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Appropriations be discharged from further consideration of H.R. 4766 and that the papers then be returned to the House of Representatives.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## ADDITIONAL TEMPORARY EXTENSION OF PROGRAMS UNDER THE SMALL BUSINESS ACT AND THE SMALL BUSINESS INVESTMENT ACT OF 1958

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 2700, which was introduced earlier today by Senators SNOWE and KERRY.

The ACTING PRESIDENT pro tempore. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2700) to provide an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958 through September 17, 2004, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

● Mr. KERRY. Mr. President, today I join Chairman SNOWE in supporting legislation to keep the Small Business Administration and its financing and counseling assistance available to small businesses. This bill authorizes the SBA and most of its programs through the September 17, 2004, which will allow time for the House to complete its work on the SBA's 3-year reauthorization bill, passed by the Senate in September 2003, and for the committee to find common ground with the administration on needed program changes to SBA's venture capital program, the Small Business Investment Company program. In addition to the 8-week extension, this bill includes a provision necessary to bring the administration into compliance with a January 2004 recommendation by the SBA's Inspector General. This change will save the SBA hundreds of thousands of dollars by allowing the agency's fiscal and transfer agent for the 7(a) loan program's secondary market program to keep the interest earned on fees lenders pay before they are remitted to the government. Currently, the SBA does not have that authority. The committee wants the program to continue running smoothly and successfully, and we think this change should accomplish this.

With passage of this bill, the committee expects the SBA to move forward on grants for all its programs and certification for minority businesses, and any other business it has been delaying.

I am pleased that this bill will extend all of SBA's programs and pilot programs; however I am disappointed that the dire and urgent needs of the Women's Business Center program have yet to be fully addressed.

As many of my colleagues know, there are currently 88 Women's Business Centers. Of these, 35 are in the initial grant program and 53 will have graduated to the sustainability part of the program in this funding cycle. These sustainability centers make up more than half of the total Women's Business Centers, but under the current funding formula are only allotted 30 percent of the funds. Without changing the portion reserved for sustainability centers to 48 percent as the Snowe-Kerry bill, S. 2266, contemplates, all grants to sustainability centers could be cut in half, or worse, 23 experienced centers could lose funding completely. In short, this change would simply direct the SBA to reserve 48 percent of the appropriated funds for the sustainability centers, instead of 30 percent, which would allow enough funding to keep open the most experienced centers, while still permitting the establishment of new centers and protecting existing ones.

I believe it is not enough to merely extend the Women's Business Center program and not make this critical and bipartisan change.

I thank my colleagues for their support of small businesses and for considering immediate passage of this important small business bill.●

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements regarding this matter be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The bill (S. 2700) was read the third time and passed, as follows:

S. 2700

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. ADDITIONAL TEMPORARY EXTENSION OF PROGRAMS UNDER SMALL BUSINESS ACT AND SMALL BUSINESS INVESTMENT ACT OF 1958.**

The authorization for any program, authority, or provision, including any pilot program, that was extended through June 4, 2004, by section 1 of Public Law 108–217 is further extended through September 17, 2004, under the same terms and conditions.

**SEC. 2. TECHNICAL AMENDMENT.**

Section 2 of Public Law 108–205 is amended by striking ''October 1, 2003'' and inserting ''March 15, 2004''. The amendment made by the preceding sentence shall take effect as if included in the enactment of the section to which it relates.

**SEC. 3. COMPENSATION OF AGENTS.**

Section 5 of the Small Business Act (15 U.S.C. 634) is amended—

(1) in subsection (g)(4), by adding at the end the following:

''(C) The Administration may contract with an agent to carry out, on behalf of the Administration, the assessment and collection of the annual fee established under section 7(a)(23). The agent may receive, as compensation for services, any interest earned on the fee while in the control of the agent before the time at which the agent is contractually required to remit the fee to the Administration.''; and

(2) in subsection (h)—

(A) by redesignating paragraph (2) as paragraph (3); and

(B) by inserting after paragraph (1) the following:

''(2) The agent described in paragraph (1)(B) may be compensated through any of

the fees assessed under this section and any interest earned on any funds collected by the agent while such funds are in the control of the agent and before the time at which the agent is contractually required to transfer such funds to the Administration or to the holders of the trust certificates, as appropriate.''.

## ORDERS FOR WEDNESDAY, JULY 21, 2004

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Wednesday, July 21. I further ask that following the prayer and the pledge, the morning hour be deemed to have expired, the Journal of the proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period of morning business for statements only for up to 90 minutes, with the first 45 minutes under the control of the Democratic leader or his designee, and the last 45 minutes under the control of the majority leader or his designee; provided that following morning business, the Senate resume consideration of S. 2677, the Morocco trade bill, as provided under the previous order.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, if I could ask a question of the majority leader, we are going to complete our vote at about 12 o'clock tomorrow. Does the leader have an idea as to what we might do tomorrow afternoon?

Mr. FRIST. Mr. President, over the course of the next several hours, we will be working on a number of pieces of business that we might be able to address. Just for general information, the work we need to do over the next several days includes the DOD conference report; we will know within an hour or so when it will be coming back. We will proceed with that as soon as we can, as soon as it is available; we are still in discussions over some tax extensions that we have been in discussions on in the last several days. We would like to proceed with that at this juncture, until we see what the discussions entail. The resolution of that, I would expect, will be in the early afternoon, but it is uncertain.

Mr. REID. It is my understanding that there are events tomorrow night, so we should not be in late tomorrow night. Would it be appropriate to indicate that for Members on this side of the aisle?

Mr. FRIST. Mr. President, indeed, we will not be going late tomorrow night. It will be early. I am not sure exactly what time, but there are events planned tomorrow night. We don't expect to be in tomorrow night.

In terms of scheduling, because we are waiting for certain bills from the House, we will be in close touch and let our Members know. We understand that we have events beginning this weekend and some beginning on Friday as well. I had discussions with the Democratic leader earlier. We have a lot to do, and a lot of it is not seen on the Senate floor, but it is being produced. We have to address it before we leave.

The cloture vote I just filed on the circuit court judge we will be debating for some time after tomorrow morning, so that may be what we do tomorrow.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

## PROGRAM

Mr. FRIST. Mr. President, in closing, under the previous order, we will vote on passage of the Morocco trade bill, which we have discussed today, at 11:30 tomorrow. We are going to have a busy week, as I just mentioned, before going out on a long recess. There is a lot of important legislation that we are and will continue to be discussing.

## ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:41 p.m., adjourned until Wednesday, July 21, 2004, at 9:30 a.m.

## DISCHARGED NOMINATIONS

THE SENATE COMMITTEE ON FINANCE WAS DISCHARGED FROM FURTHER CONSIDERATION OF THE FOLLOWING NOMINATIONS AND THE NOMINATIONS WERE PLACED ON THE EXECUTIVE CALENDAR PURSUANT TO AN ORDER OF THE SENATE OF JULY 8, 2004:

*JUAN CARLOS ZARATE, OF CALIFORNIA, TO BE AN ASSISTANT SECRETARY OF THE TREASURY.

*STUART LEVEY, OF MARYLAND, TO BE UNDER SECRETARY OF THE TREASURY FOR ENFORCEMENT.

*NOMINATION WAS REPORTED WITH RECOMMENDATION THAT IT BE CONFIRMED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.